United Nations A/60/337

General Assembly

Distr.: General
7 September 2005

Original: English

Sixtieth session
Items 46, 47, 48 and 49 of the provisional agenda*

Follow-up to the outcome of the special session on children

Follow-up to the outcome of the twenty-sixth special session: implementation of the Declaration of Commitment on HIV/AIDS

Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields

2001-2010: Decade to Roll Back Malaria in Developing Countries, Particularly in Africa

Letter dated 6 September 2005 from the Permanent Representative of Japan to the United Nations addressed to the Secretary-General

I have the honour to forward to you the text of the Chair's summary of the High-level Forum on Health Millennium Development Goals in Asia and the Pacific, convened in Tokyo from 21 to 22 June 2005 (see annex). The Forum was attended by health, development and finance ministers from the Asia-Pacific region and representatives from donor countries, international and regional organizations and relevant foundations and partnerships.

The summary takes stock of the progress that has been made in achieving the health-related MDGs while identifying the challenges that remain, and the Government of Japan, as organizer of the event, strongly believes that it will be an important contribution to the deliberations at the 2005 World Summit.

I would be grateful if you would have the present letter and its annex circulated as a document of the General Assembly under agenda items 46, 47, 48 and 49.

(*Signed*) Kenzo **Oshima**
Permanent Representative of Japan to the United Nations

* A/60/150.

05-48273 (E) 220905

Annex to the letter dated 6 September 2005 from the Permanent Representative of Japan to the United Nations addressed to the Secretary-General

22 June 2005
Tokyo

Chair's Summary: High-level Forum on Health Millennium Development Goals in Asia and the Pacific

Introduction

The Government of Japan, in cooperation with the Asian Development Bank, the World Health Organization (WHO), and the World Bank, convened the High-level Forum on Health Millennium Development Goals in Asia and the Pacific from 21 to 22 June 2005 in Tokyo. The Forum was opened by Ichiro Aisawa, Senior Vice-Minister for Foreign Affairs, Hiroyoshi Nishi, Senior Vice-Minister of Health, Labour and Welfare, and Shigeru Omi, Regional Director of the Western Pacific Regional Office of the World Health Organization, with the participation of Ministers in charge of development, finance and health (1 Vice-Prime Minister, 7 Ministers of Health, 2 Ministers of Finance and 1 Minister of Natural Resources and Environment) and equivalent persons from 24 countries in Asia and the Pacific, 6 donor countries and the European Commission, international organizations, regional organizations, foundation and partnerships. The Forum took stock of progress and identified challenges and opportunities for accelerating efforts towards the achievement of the health Millennium Development Goals. Experiences and best practices from Asia and the Pacific will be an important input to the G-8 Gleneagles Summit and the High-level Plenary Meeting of the United Nations General Assembly on the Millennium Declaration. The Forum participants expressed appreciation for Japan's assistance and welcomed the new Health and Development Initiative of Japan. The High-level Forum on Health Millennium Development Goals in Asia and the Pacific will be followed up through annual meetings of the WHO Regional Committees.

Better health is central to the achievement of the Millennium Development Goals, both as an end in itself and as a major contributor to the overarching goal of reducing poverty and to economic growth.

The countries of Asia and the Pacific, as a group, have fared relatively well in reducing poverty (goal 1 of the Millennium Development Goals). However, current conditions indicate that most countries will miss the target regarding reducing child mortality (goal 4), poor progress is observed in improving maternal health (goal 5), and the majority of the countries are not doing well in combating HIV/AIDS, while only modest progress is being made in controlling malaria and other diseases (goal 6). If countries of the region do not take adequate prevention and care measures for combating HIV/AIDS and reduce new infections to at least 50 per cent of the present level, not only will goal 6 become unattainable, but the achievement of goal 1, on poverty, may also be delayed in some countries.

The participants acknowledged the progress made by countries in the region, but there remain many challenges. The participants resolved to strengthen efforts to

achieve the health Millennium Development Goals on the basis of ownership and partnership.

The Forum focused on four key cross-cutting issues that are crucial for achieving the health Millennium Development Goals in Asia and the Pacific, namely (a) strengthening health systems through capacity-building, (b) promoting cross-sectoral actions to achieve the health Millennium Development Goals, (c) securing resources and increasing effectiveness to achieve the health Millennium Development Goals, and (d) ensuring equity in access to quality health services.

Session A: strengthening health systems through capacity-building

Analysis of the current situation and key challenges in the achievement of the health Millennium Development Goals shows that technical interventions are, in fact, available. What is often critically missing is effective health systems that can ensure that these interventions are delivered to those most in need. In particular, effective interventions are failing to reach the most vulnerable groups. Countries need to ensure sustainable public investment in the essential public health functions.

Key dimensions of health systems

Health systems are a means of achieving health outcomes.

Health system performance should be measured by the extent to which the various health Millennium Development Goals and other health outcomes are able to be achieved. This could be taken as evidence of the overall success of the health system.

In many countries, weak health systems pose a considerable obstacle to the achievement of the Millennium Development Goals. National and international support to strengthen these systems is urgently required.

Linking various health programmes can promote synergies to accelerate progress towards the health Millennium Development Goals. For example, sexual and reproductive health and HIV/AIDS programmes could be more successfully integrated, offering women a confidential location for voluntary counselling and testing and family planning services, thus providing an opportunity for intervention in the early stages of HIV.

- Appropriate health-system model to deliver the health Millennium Development Goals

  Clearly there is no single model — countries vary enormously. Even within countries, there may be an overall guiding framework, but there certainly need not be a single system dominated by the public sector.

- Planning, organization and delivery

  Governments have to take the responsibility to ensure the availability of a minimum package of essential health services, especially for the poor. Services can be augmented by public-private partnerships or other strategies.

  Health systems operate in different kinds of settings — for example, fragile States. Getting health systems right in those circumstances may require different approaches.

- Health services regulation

Governance and stewardship are important. The question of regulation of the health sector is more relevant where government is not the sole provider.

Ensuring the quality of health services is a key challenge. PPM-DOTS India demonstrated how Governments can do so by playing a regulation and stewardship role.

- Financing the health system

We have good estimates of the minimum investment needed to establish an adequate health system. Countries need to ensure adequate financing, including pro-poor health-care financing. However, in poorer countries, external assistance will continue to play a vital role.

Donors need to deliver on their internationally agreed commitments. The quality of donor assistance is as important as quantity and can improve health-system performance.

Ways to strengthen health systems

Country-level actions

- Health policies

Health should be encapsulated in an overall clear set of widely understood and known development policies and strategies.

There is a need to ensure national ownership of health-system policies, around which donors should align. Political commitment is important in this regard.

Setting clear priorities is critical. Policies should lead to clear and effective strategies for implementation.

Strengthening the referral system at multiple levels is critical for overall health-system development. Health infrastructure development should be complemented by appropriate human resource development policies.

- Human resources

Addressing human resource shortages and work conditions is a priority within the health-system agenda and requires long-term commitment and planning.

Samoa demonstrated that an appropriate skill mix can promote delivery of services in far-flung areas and can be particularly important for improving service quality and ensuring retention.

Even with a clear commitment to achieving the Millennium Development Goals, managerial and implementation capacity is often weak and needs strengthening.

- Pharmaceuticals and vaccines

As the Sri Lanka case study shows, Governments have a role to play in effectively regulating the supply of affordable essential drugs and vaccines and

their prices and quality. Governments must also ensure an effective drug-storage and distribution system.

Countries also face challenges in keeping prices of drugs and vaccines down, particularly in the context of countries' entry into agreements with the World Trade Organization and the opportunities created under the Agreement on Trade-related Aspects of Intellectual Property Rights.

- Health information, knowledge management and research

There is a need to strengthen capacity in the production and use of quality evidence to support policymaking.

Health information needs to be timely and reliable. Disaggregation of health information by various indicators of social exclusion enables the analysis of equity.

In translating evidence into decision-making, information needs to be packaged in a user-friendly way and factors that push managers to use evidence need to be analysed.

Health-system research can help address important health challenges.

There may be imbalances in the use of research resources, with a large share of the resources being devoted to the health research priorities of developed countries.

It is sometimes more cost-effective to use research capacity in developing countries to undertake health-system research related to their needs and priorities.

Donors have a role to play in supporting health-system research.

Role of international partners, harmonization and global partnerships

Clear domestic polices are important, but they need to be supported by concerted international action in accelerating the achievement of the Millennium Development Goals.

It is critical for donors to align their support with the national Government's mandate and priorities.

There is need for a more coherent architecture of international support that addresses coordination. Donors should use existing national structures rather than set up new ones.

Global initiatives, such as the Global Alliance for Vaccines and Immunization and the Global Fund to Fight AIDS, Tuberculosis and Malaria, have a role to play in strengthening health systems as part of their core business. Harmonization among these initiatives and among the various stakeholders is important.

Session B: cross-sectoral actions to achieve the health Millennium Development Goals

It is well recognized that health is significantly influenced by social and other non-health factors. Achieving the non-health Millennium Development Goals will have a direct impact on the health Millennium Development Goals. Progress on goal

1, on poverty reduction, and goal 2, on primary education, affects progress on goals 4, 5 and 6. In addition, progress on goals 4, 5 and 6 is dependent on goal 7, on environmental sustainability, and goal 8, on global partnership for development. However, the corollary notion that non-health-sector actions are also needed to successfully achieve health sector objectives is not always equally well appreciated. This session discussed governance issues, especially how systematically integrating non-health sector actions in support of desired health outcomes can be achieved through institutionalizing appropriate procedures and organizational arrangements. In particular, it considered examples where institutional mechanisms have been established, in Indonesia and in Kyrgyzstan, to achieve cross-sectoral integration with regard to policy, planning and implementation in support of health-sector objectives.

- A cross-sectoral approach combining health, nutrition, education, agriculture and infrastructure, as well as addressing cross-cutting issues such as gender, environment and governance, is needed and highly effective in achieving health Millennium Development Goals through shared responsibility.

  Kyrgyzstan established an effective partnership among government, commercial private producers and other interested parties to address the specific health objective of reducing iodine deficiency.

  Indonesia has developed a broader approach in planning and implementation that integrates health and non-health concerns across all relevant sectors in the context of decentralization.

  Incorporating components addressing health issues in projects that are not directly related to the health sector is an effective way to improve health indicators and avoid any adverse effects on health. For example, transport infrastructure is essential for ensuring access to health services in terms of both supply (provision of quality health services and supplies) and demand (users' access to such services), but could also have negative impacts that need to be mitigated, such as the spread of HIV/AIDS and communicable diseases.

  Another example is that there is a possibility that a microcredit project involving women might inadvertently affect children's health because it demands too much time from mothers without offering alternative support for the children in the short term.

Leadership and ownership

- Leadership and ownership at all levels are essential to increase the priority attached to the health Millennium Development Goals. Strengthened analysis of the economic benefits of health will contribute to increasing the priority of health. Capacity for research and analysis needs to be developed.

- Health is more than the absence of disease; it includes physical, social, mental and spiritual well-being. Therefore, health should be the concern of everyone.

- Cross-sectoral actions in support of health Millennium Development Goals need to be integrated in strategic planning and budgeting at the macrolevel, where competing national priorities are identified and selected.

- Governments may consider establishing a high-level, multisectoral national steering committee that monitors and evaluates programmes to facilitate cross-sectoral actions and coordination

Economic growth

- Significant investments needed to meet the Millennium Development Goals require appropriate domestic resources — including from the private sector
- Economic growth is ultimately the only road to financial self-sufficiency on a sustainable basis
- In the meantime, increased ODA aligned with national priorities will still need to be mobilized, particularly by the low-income countries of the region

Participation

- People's will to be healthy is often underestimated. An approach that takes the perspective of human security and emphasizes protection from threats and empowering people is essential
- People's lives are multisectoral. People are making multisectoral decisions for themselves every day. Therefore, a decentralized cross-sectoral approach most closely conforms with people's actual lives
- Decentralization facilitates participation of all stakeholders in decision-making at the local level, thereby strengthening local ownership and sustainability. Joint health committees established at the local level in Indonesia are an example of the institutionalization by the Government of a participatory process. Involvement of NGOs and civil society plays an important role
- The bottom-up approach implies that lower levels influence decisions at higher levels. Health and education can be entry points for promoting rural development based on participatory approaches, particularly in fragile States

Sharing knowledge and building capacity

- There is a need for more generation, management and sharing of knowledge about effective cross-sectoral actions for health
- Focusing on health outcomes inherently leads to a cross-sectoral focus, while focusing on inputs tends to emphasize individual sectors
- Identifying good practices requires evaluation to assess the outcomes and determine the factors of success and failure. This requires appropriate tools; for example, health-impact assessments
- Evaluations will enable us to scale up successful interventions by sharing experiences in the region and in other regions
- Least developed countries, island States, fragile States and States emerging from conflict need particular attention
- Regional and South-South cooperation should be encouraged as an effective way of sharing knowledge and experiences

Session C: securing resources and increasing effectiveness to achieve the health Millennium Development Goals

Current resources for health fall far short of needs in most countries. It is a challenge for countries to be able to afford basic health services for their populations, ensure financial protection and achieve the Millennium Development Goals. High levels of out-of-pocket spending dominate and are indicative of limited risk-pooling and financial protection. As a result of the economic structures in many countries, domestic resource mobilization efforts are frequently severely constrained and are not efficient, equitable, or sustainable. Moreover, available resources are frequently not used effectively. This comes at a time when the need for scaling up programmes is putting already weak health systems under increasing strain. Health-sector-specific bottlenecks and other institutional and macroeconomic absorptive capacity constraints often preclude the effective use of available external funding. Moreover, health and nutrition transitions are putting new cost pressures on countries in terms of growing populations, ageing and higher dependency ratios. Thus, it is important to improve domestic resource mobilization efforts, obtain external grant funds and ensure that funds are spent in an equitable and efficient manner. Health investments need to be guided by clear and effective strategies linked to outcomes, closely aligned with broader national development processes, such as in PRSPs and SWAPs/PBAs, and be consistent with medium-term expenditure frameworks. Effective macroeconomic management is a critical concomitant for providing the "fiscal space" needed to absorb large new external investments in health and laying the bases for sound future financing of Asia's health systems.

The cases of Thailand and Bangladesh provide important examples of countries which are effectively grappling with these financing issues. In the case of Thailand, the Government has now achieved universal coverage by extending coverage to 18 million uninsured for a basic package of essential services under the "30 baht scheme" and increasing the Ministry of Health's budget in a strongly pro-poor manner by focusing on rural primary health facilities, including community hospitals and health centres. Political will and leadership were critical concomitants of implementing the reform, as were peace and economic growth, which provided the fiscal space for increased allocations to the health sector. As a result of these policies, Thailand has achieved universal coverage and better financial protection for the poor, improved allocative efficiency through a more effective focus on primary care and the poor and increased public health spending to over 10 per cent of the national budget. The country is also earmarking tobacco and alcohol taxes for health in order to ensure long-term sustainability.

In the case of Bangladesh, the Government has not yet achieved universal coverage of health services but has over the past five years focused spending on the Essential Services Package (ESP) — thus shifting resources from the tertiary and secondary to the primary level. It has increased its budgeting allocation in real terms by about 17 per cent, and donor support has increased by some 60 per cent. The proportion of public health expenditure going to ESP rose by over 50 per cent. The country has committed to increased allocations to the Ministry of Health and Family Welfare budget by at least 10 per cent annually, while efforts will be ongoing to increase the absorptive capacity through improved and more transparent procurement and financial management systems. The Ministry will reallocate resources to the poorest districts and design and implement a beneficiary

identification system in order to target public subsidies in favour of the poor, thus ensuring a reduction in health inequalities. Furthermore, the Ministry has already initiated demand-side financing pilots (e.g., vouchers for maternal health) as an alternative way of reaching the poor. The Ministry is also moving towards more diversified service provision through greater public-private partnerships.

Important remarks and lessons were shared by the delegates from France, the International Planned Parenthood Federation, Mongolia, Tonga, the Joint United Nations Programme on HIV/AIDS, the United Nations Children's Fund (UNICEF), the United States of America, Pakistan, Malaysia, the Economic and Social Commission for Asia and the Pacific, the Global Alliance for Vaccines and Immunization, the United Nations Population Fund, Nepal and Japan. The importance of donor coordination, the need to include NGOs in national health strategies, accountability and the importance of sharing Asian experience were highlighted. The United States delegate informed the group about a new maternal, newborn and child health partnership, which will be launched at the United Nations General Assembly in September. UNICEF shared its 10 principles for developing Millennium Development Goal-oriented health systems and policies. The Japanese delegate stressed the importance of ownership, country-specific approaches and the importance of the complementarity of aid approaches.

Ways to secure resources and increase effectiveness

- Taking into account country-specific demographic and epidemiologic trends is critical for developing both short- and long-term financing strategies
- Securing adequate public and private resources in an equitable, efficient and sustainable manner linked to results is critical for achieving the Millennium Development Goals and preventing individuals from falling into poverty from health shocks
- Improving domestic resource mobilization is a critical concomitant of effective and equitable financing policies
- Using resources more effectively can result in both important health gains and improved equity
- Obtaining increased external grant funding through better alignment of country and donor strategies and removing barriers to the effective use of external funds are necessary conditions for meeting the Millennium Development Goals, particularly in low-income countries
- Improving the predictability, longevity and coordination of donor aid is essential for reducing transaction costs for countries, creating fiscal space and ensuring medium- to long-term financial sustainability
- Placing economic growth at the heart of the overall development policy is essential to ensure sufficient and sustainable finance needed to realize health Millennium Development Goals
- Peace and security are necessary conditions for sustainable efforts in health, development and fiscal space. The imperative to preserve health infrastructure against wilful destruction in conflict situations was emphasized

- Promoting and strengthening support for South-South cooperation is an effective way of sharing good practices and know-how among developing countries faced with similar challenges and should be supported by donor countries.

- Building public and private partnerships among various stakeholders at the community, national and international levels is important for mobilizing resources, effective service delivery and increasing development impacts.

Session D: promoting equity in access to quality health services

Many countries in the region are making good progress in achieving the health Millennium Development Goals. However, regional averages mask a widening of health inequalities and increasing inequalities to access to quality health services. This session discussed key dimensions of equity in relation to the health Millennium Development Goals and considered ways to close the disparities.

Among the main points raised at the session were the following:

Key dimensions of equity

- Important health inequities exist in the Asian region, as in other regions.

- There are many important sources of inequity in health: social disparities involve gender; geographic, urban-rural, economic, ethnic and other factors. The situation varies greatly among countries and regions.

- Even basic health services intended to reach the poor normally achieve higher coverage rates among the better off, thereby exacerbating disparities.

- Reaching the poor and excluded is not only a human rights imperative but also essential for reaching Millennium Development Goals.

Ways to close disparities

- Protect the poor by integrating health dimensions in poverty reduction strategies.

- Identifying and remaining vigilant to the existence of disparities in health service coverage constitutes an important starting point. For this purpose, there is a need for collecting and analysing data on health that are disaggregated by economic status, gender and other factors of inequity.

- An approach based on the perspective of human security, which places the focus on individuals and emphasizes protection from threats and fear as well as empowerment of the people, is important in addressing disparity.

- To address health disparities related to gender, promotion of women's empowerment, gender equality and universal access to reproductive health services in accordance with the Beijing Platform for Action and the International Conference on Population and Development Programme of Action are important. In this context, it was suggested that the target of universal access to reproductive health by 2015 be added, in relation to Millennium Development Goal 5 to address women's health beyond mortality prevention — while also recognizing its importance in combating HIV/AIDS

and reducing child mortality, as well as in promoting gender equality and eradicating poverty.

- Many different techniques for orienting health services towards the poor have been found to work well in certain situations. Examples covered in the discussion include:

  Focus on poor areas during the initial stages of a universal coverage programme. While blanket approaches can be effective, for the most marginalized, special intervention may sometimes be needed. One way of doing this is by giving high priority to delivering services to districts with low levels of human development.

  While improving services for everybody and creating more service-oriented attitudes on the part of health staff are important to reach the poor and marginalized, one cannot reach them just by waiting in health facilities for people to come to use the services. Outreach to bring services to people and empowerment of people to raise awareness of the need to use services and of the right to demand good services is as important.

  Support NGOs shown to work effectively with marginalized and low-income communities.

  Participatory project development has been shown to work more effectively than a top-down approach in addressing equity.

  Provide subsidized health insurance to poor individuals identified through a means test, as in the Philippines. The Philippines national health insurance programme, "Philhealth", succeeded in extending coverage to 84 per cent of the population, including the self-employed and migrant workers, through cross-subsidy between central Government, local government and the relatively well off.

  Cambodia's equity fund, currently under development, aims, inter alia, to facilitate access for the poorest to priority public health services and to protect the poor from falling into deeper poverty due to catastrophic health events.

  Viet Nam has established a health-care fund for the poor that, since 2002, has provided free care for more than 14 million people and covered 77 per cent of Viet Nam's poor people in a joint effort of the Government and the society. Viet Nam also has a health-care network at the grass-roots level through which national programmes to control such diseases as tuberculosis, leprosy, malaria, goiter have been successfully implemented.

  Monitoring access to essential health services, including reproductive health services, and health outcomes based on appropriate indicators and a multisectoral system such as a high-level steering committee is necessary for addressing health inequity.

  Changing attitudes requires person-to-person communication but also the promotion of social dialogue by diverse groups. This social dialogue is needed for widespread attitude and behavioural changes that help individuals make decisions that were not part of their deep-rooted traditions.

Appendix

List of participants in the High-level Forum on Health Millennium Development Goals in Asia and the Pacific

Countries

Australia
Bangladesh
Bhutan
Brunei Darussalam
Cambodia
China
Fiji
France
India
Indonesia
Japan
Korea
Kyrgyzstan
Lao People's Democratic Republic
Luxembourg
Malaysia
Mongolia
Myanmar
Nepal
Pakistan
Papua New Guinea
Philippines
Samoa
Singapore
Sri Lanka
Thailand
Tonga
United Kingdom of Great Britain and Northern Ireland
United States of America
Viet Nam

Organizations

Asian Development Bank
European Commission
Economic and Social Commission for Asia and the Pacific
Global Alliance for Vaccines and Immunization
International Monetary Fund
International Planned Parenthood Federation
Joint United Nations Programme on HIV/AIDS
United Nations Development Programme
United Nations Population Fund
United Nations Children's Fund
World Bank
World Health Organization

United Nations A/60/338

General Assembly

Distr.: General
7 September 2005

Original: English

Sixtieth session
Item 73 (b) of the provisional agenda*
Human rights questions: human rights situations and reports of special rapporteurs and representatives

Protection of and assistance to internally displaced persons

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, submitted in accordance with General Assembly resolution 58/177 and Commission on Human Rights resolution 2005/46.

* A/60/150.

05-48279 (E) 041005

Report of the Representative of the Secretary-General on the human rights of internally displaced persons

Summary

After the development of a rights-sensitive analytical framework in the form of the Guiding Principles on Internal Displacement and over a decade of engagement at the United Nations, institutionally and with States, on issues of internal displacement, the Commission on Human Rights in March 2004 chose to refocus its mandate on the protection and promotion of the human rights of internally displaced persons (IDPs). In September 2004, Walter Kälin was appointed as the Secretary-General's Representative on the human rights of internally displaced persons.

In his first report to the General Assembly, the Representative surveys his activities since taking up his mandate and offers recommendations for future action. The disastrous tsunamis of 26 December 2004, causing massive internal displacement on a multiregional scale, were a major challenge for the Representative's mandate. Working visits to Sri Lanka and Thailand enabled the Representative to underscore the human rights implications of natural disasters. Like his predecessor, Francis Deng, the Representative undertook working visits, amongst others to Turkey, and official missions, namely to Nepal, Croatia, Bosnia and Herzegovina and Serbia and Montenegro, including Kosovo. In each country, the Representative was able to pursue a constructive dialogue with the national authorities, members of civil society and representatives of the United Nations and other international organizations and to meet IDPs in order to listen to their concerns. He is of the firm view that durable solutions to issues of internal displacement of both long and more recent standing can only be found through effective cooperation and action, supported by all States, based on the Guiding Principles on Internal Displacement and the international human rights standards which underpin them.

The Representative has also pursued the dialogue within the United Nations system. Together with senior officials of several departments of the United Nations, he has explored avenues for further mainstreaming the human rights of internally displaced persons in the work of the United Nations. Encouraged by the creation of the Internal Displacement Division within the Office for the Coordination of Humanitarian Affairs, the Representative has also supported the call for clearer responsibility and lines of accountability for the protection and assistance of IDPs. Finally, as did his predecessor, the Representative has continued to build links with civil society in order to increase awareness of issues of internal displacement and capacities to respond promptly in crisis situations.

Contents

		Paragraphs	*Page*
I.	Introduction	1–3	4
II.	Internal displacement and the reform of the United Nations	4–7	4
III.	Internal displacement as a result of armed conflict and situations of violence — regional and national issues	8–37	6
	A. Mission to Nepal	9–18	6
	B. Mission to the Balkans: Croatia, Bosnia and Herzegovina, Serbia and Montenegro (including Kosovo)	19–31	8
	C. Working visit to Turkey	32–37	12
IV.	Internal displacement as a result of natural disasters	38–60	13
	A. Human rights problems faced by IDPs due to natural disasters	40–43	14
	B. The relevance of the Guiding Principles on Internal Displacement to situations of natural disasters	44–56	15
	C. Monitoring	57	18
	D. Improved preparedness of the international community to address the human rights dimension of natural disasters	58–60	19
V.	The Representative's mainstreaming of the human rights of IDPs within the United Nations system	61–63	20
VI.	Conclusions and recommendations	64–65	21

I. Introduction

1. For over a decade, the humanitarian crises posed by the scope of internal displacement have engaged the attention of the international community. The appointment in 1992 of a Representative of the Secretary-General on internally displaced persons, Francis Deng, marked the commencement of a decade of sustained attention to developing solutions to the challenge of internal displacement. The Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) emerged as a basic normative framework, applying the provisions of international human rights and humanitarian law, as well as refugee law by analogy, to victims of internal displacement. At the same time, the Representative was pivotal in advocating for the rights of internally displaced persons (IDPs), particularly through country missions and other visits, and in advancing the institutional "collaborative response" of the United Nations and its specialized agencies as the only possible answer to the broad spectrum of IDPs' needs.

2. The Commission on Human Rights, in its resolution 2004/55, set out the framework of a new mandate of a Representative of the Secretary-General on the human rights of internally displaced persons. It gave a specific human rights focus to the mandate, inviting the Representative to engage in coordinated international advocacy and action for improving protection and respect of the human rights of persons who have become internally displaced. In September 2004, Walter Kälin was appointed to the mandate. Further to the Representative's report to the Commission on Human Rights in 2005 (E/CN.4/2005/84 and Add.1), the present report describes the activities that he has engaged in since his appointment. Building on the report of the Secretary-General on the reform of the United Nations, the Representative sets out the main conclusions and outcomes of his country missions and working visits to Turkey, Nepal, Croatia, Bosnia and Herzegovina and Serbia and Montenegro undertaken up to August 2005.[1] He then addresses human rights issues raised by the internal displacement caused by the unprecedented tsunamis of 26 December 2004.

3. The present report is submitted pursuant to Commission resolution 2005/46 and General Assembly resolution 58/177.

II. Internal displacement and the reform of the United Nations

4. In his 2005 report entitled, "In larger freedom: towards development, security and human rights for all" (A/59/2005 and Add.1-3) the United Nations Secretary-General advanced his view of the fundamental and profound interrelationship between development, security and the practical enjoyment of human rights by all persons. In the context of the challenges facing a changing world, the Secretary-General noted that since the adoption of the Millennium Declaration over 40 countries had been scarred by violent conflict. In concrete terms, he pointed out that the number of internally displaced people stood at roughly 25 million, nearly one third of whom were beyond the reach of United Nations assistance. These persons stood alongside the global refugee population of over 9.2 million.

5. The Secretary-General stressed that, in addressing a globally interconnected challenge such as that posed by IDPs, it was in each country's self-interest that all situations of displacement be addressed effectively. That required broad, deep and

sustained global cooperation between States. In his assessment of the humanitarian response system of the United Nations, the Secretary-General emphasized that, unlike refugees, who had crossed an international border, those displaced within their own countries were not protected by a specific instrument. Yet those acutely vulnerable persons and their needs often fell between the mandates of the various humanitarian bodies, although their rights seriously needed to be protected. In order to address this problem, the Secretary-General urged Member States to accept the Guiding Principles on Internal Displacement as the basic international norm for the protection of such persons, and to commit themselves to promote the adoption of these principles through national legislation. With regard to the institutional response of the Organization, the Secretary-General stressed that while steps had been taken to ensure that agencies provided assistance to such groups within their respective areas of competence, more was needed for an effective collaborative response. With the support of Member States, he thus intended to strengthen further the inter-agency response to the needs of IDPs, under the global leadership of his Emergency Relief Coordinator, and at the country level through the humanitarian coordinator system.

6. The Representative on the human rights of internally displaced persons fully shares the Secretary-General's assessment concerning the nature of the challenge posed by internal displacement and the urgent need for creative and durable solutions on the part of Member States and the United Nations to address the critical humanitarian and human rights issues involved. In particular, the Representative stands with the Secretary-General in commending the Guiding Principles on Internal Displacement as the basic international norm for addressing the issue of internal displacement, recalling that they reflect and are consistent with international human rights, humanitarian and analogous refugee law, and were drawn up to address the specific needs of IDPs. The Representative has continued to take the Guiding Principles and the international instruments that underpin them as the touchstone for all his activities undertaken pursuant to his mandate. In particular, he has started work that will lead to a manual for domestic legislation and policymaking with regard to IDPs to assist Governments in implementing the Guiding Principles at the domestic level.

7. As regards the need to improve the collaborative response to situations of internal displacement, the Representative welcomes current efforts to assign responsibility for specific sectors such as camp management, water and sanitation, health and others to designated agencies in order to strengthen accountability within the framework of the collaborative approach. He also welcomes the initiative to designate an agency with primary responsibility for the protection of the rights of IDPs at the operational level. He stresses, however, that it would be important to ensure that the notion of protection is comprehensive, covering all relevant human rights and humanitarian law guarantees and thus responding to the whole spectrum of the needs of IDPs. The Representative refers in this context to his more detailed discussion of protection in his report to the Commission.[2] Assigning primary sectoral responsibility for protection to one agency should not be understood as precluding protection activities of other actors; rather, in order to ensure full protection of IDPs, close cooperation between the different agencies and actors will be necessary. Finally, the Representative feels that his mandate to focus on advocating for the human rights of IDPs, mainly through dialogue with Governments and other relevant actors, and on mainstreaming the human rights of

the displaced into all relevant parts of the United Nations system, would not duplicate but usefully complement the activities of the agency primarily responsible for protection activities at the operational level, and he plans to closely coordinate and cooperate with it.

III. Internal displacement as a result of armed conflict and situations of violence — regional and national issues

8. The Representative's individual mission reports on each country will, consistent with past practice, be annexed to his report to the Commission on Human Rights at its sixty-second session. In this report to the General Assembly, the Representative seeks to present his overall conclusions and main recommendations. During each mission, the Representative met with senior governmental officials, a wide array of relevant international and national actors, and IDPs themselves. In some cases, he travelled extensively within the countries in order to gain a first-hand impression of the situation of the IDPs. All missions and working visits proved to be most fruitful and augured well for continued collaboration with the Governments concerned, to which the Representative has consistently reaffirmed his commitment.

A. Mission to Nepal

9. In conjunction with the Internal Displacement Division of the Office for the Coordination of Humanitarian Affairs (OCHA-IDD), the Representative conducted a mission to Nepal from 13 to 22 April 2005, at the invitation of the Government. The main objectives were to assess the situation of displacement in Nepal and to make recommendations to the national authorities and other relevant actors on how best to address the protection needs of IDPs.

10. From the information available to the Representative, he concluded that in addition to recurring small-scale displacement owing to natural disasters, a widespread pattern of conflict-induced displacement had emerged, next to and obscured by the traditional economic migration that Nepal has known historically. The reasons leading to this displacement are complex and encompass direct acts of violence or threats that have been made to the displaced personally; confiscation of property; fear of reprisals for refusing to let their children be forcibly recruited or to contribute food and money; fear of being caught in the crossfire or subjected to reprisals by the Royal Nepalese Army, especially given the emergence of local vigilante or self-defence groups; a general feeling of insecurity and uncertainty; the conflict-induced collapse of local structures and coping mechanisms within villages; and economic reasons, although it can be argued that the economic decline in the traditionally poorer areas of Nepal has been exacerbated by the conflict. While violence by Maoists may seem to be the principal cause of displacement in Nepal today, it is not the only one.

11. The Representative expressed his concern over the emergence and activities of vigilante or self-defence groups and the ensuing retaliation by Maoists, which in turn caused mass displacement. He was troubled that in the past some of those groups had received the tacit or explicit support or acquiescence of politicians, ministers and other State actors, given without taking into consideration the danger

to which people were being exposed. He was particularly worried that this behaviour could have a spiral effect and turn the conflict into a full-fledged civil war, as had happened in other contexts.

12. Most of the people whom the Representative met agreed that a large but unknown number of people had left their homes involuntarily and were unable to return for the reasons mentioned. There was general agreement that the actual number was higher than the official figures. Indicators of this were, among other things: entire villages without younger generations; the outflow of entire families in large numbers into India; and the increasing number of empty houses in large areas of the countryside, indicating that, unlike in traditional economic migrations, no family members had been left behind.

13. Many of the Representative's interlocutors concurred that fewer displaced persons had found refuge inside Nepal than had gone abroad. The Representative reminded the authorities that, as is invariably the case in situations of internal displacement, determining actual numbers of IDPs was inherently difficult owing to their very displacement. In the case of Nepal, he pointed out the following possible obstacles to the registration of the IDPs: the fear of being recognized or identified; the lack of any benefits to be gained from registration by the State as an IDP; the slow procedure of verification by local governments in places of origin; and the limited definition of IDPs, which made it difficult for State civil servants to register IDPs who were not victims of Maoist violence.

14. Through his discussions with IDPs, and also with aid organizations and certain local authorities, the Representative concluded that the main problems and needs faced by IDPs were security and protection; discrimination; food, shelter and health; access to education for children; documentation; sexual abuse and increased domestic violence; risk of increased female prostitution; risk of increasing child labour; and denial of voting and electoral rights in forthcoming elections.

15. The Representative underlined that being an IDP did not necessarily mean that one was in need of humanitarian assistance such as food or shelter in camps. Depending on where they came from and their possibilities for integrating in their host communities and maintaining their own coping mechanisms, they did not always need humanitarian relief or aid. However, on some occasions when emergency aid had been provided, it had been inadequately and haphazardly done. There was no coherent assistance and protection response in place, either from the Government or from the national or international organizations. The Representative pointed out that the creation of camps or settlements that quickly became slums was to be avoided as far as possible, since they constituted, among other things, a health and increased security risk for IDPs. In some cases such facilities were unavoidable, but in others, integration with the local host communities should be encouraged by means of incentives.

16. Furthermore, in certain rare cases, a return to the IDPs' places of origin could be envisaged, providing that both parties to the conflict agreed and guaranteed their security and safe return and if appropriate monitoring mechanisms, for instance through the United Nations Human Rights Monitors or local non-governmental organizations (NGOs) were put in place. In these cases, IDPs might also need reintegration assistance. In the case of protracted displacement, new employment opportunities and land entitlements had to be created in order to enable the IDPs to become self-sustaining as soon as possible. The Representative concluded that

although Nepal was not facing a humanitarian crisis in the classic sense of the term, there were grounds for serious humanitarian and human rights concerns.

17. In light of this analysis, the Representative made a series of recommendations. He welcomed the fact that the Government of Nepal was in the process of developing an IDP policy, but was aware that it had limited means and that addressing the protection and assistance of the IDPs in an adequate manner would take far more resources. He recommended that the Government continue and finish as soon as possible a national and comprehensive IDP policy with a broad definition of internally displaced persons that does not focus solely on certain victims of violence, in line with the Guiding Principles; condemn the emergence of self-defence or vigilante groups and discourage them from taking the law into their own hands; respect the distinction between combatants and non-combatants and plan military operations so as to avoid collateral damage to civilians as far as possible; amend the laws to facilitate the registration process, including for electoral purposes; train national and local authorities and officials, both civilian and military, on the rights of IDPs and the protection of the civilian population; facilitate access of national and international aid organizations to areas where IDPs gather.

18. The Representative recommended to the United Nations and the donor community that, in collaboration with the Government, they draw up a comprehensive response strategy to respond to the human rights and humanitarian needs of IDPs, encompassing prevention of displacement, protection during displacement and finding long-term solutions in consultation with displaced persons. The United Nations and the donor community should further ensure that the newly established United Nations human rights field operation in the country monitors and addresses human rights situations which could lead to conflict-induced displacement, and also monitors the return of IDPs to their places of origin. Finally the Representative called on the Communist Party of Nepal (Maoist) (CPN-M) to respect the basic principles of international humanitarian law, in particular the fundamental distinction between combatants and non-combatants and common article 3 of the Geneva Conventions, of 12 August 1949, and to make a public commitment to adhere to the Guiding Principles on Internal Displacement, which also addresses non-State actors.

B. Mission to the Balkans: Croatia, Bosnia and Herzegovina, Serbia and Montenegro (including Kosovo)

19. From 8 to 24 June 2005, the Representative undertook, at the invitation of the Governments concerned, country missions to Croatia, Bosnia and Herzegovina and Serbia and Montenegro, including Kosovo. In the Representative's view, a confluence of historical and contemporary events made the current time an appropriate one in which to assess the progress made in the region towards addressing the very large numbers of IDPs emerging from the armed conflicts of the 1990s and ensuring durable solutions for the future. While much has been achieved in the area of internal displacement, there still remain outstanding issues to be addressed.

20. The Representative emphasizes that considerable progress has been made in reducing the number of IDPs in the region and moving towards durable longer-term solutions. The efforts invested by the States concerned, the wider international

community, agencies of the United Nations, other intergovernmental bodies as well as civil society at both the national and international levels have indisputably gone a long way towards addressing the IDP challenge which was posed in such formidable terms a decade ago. While the rate of progress has at times been uneven and varied from State to State, with Kosovo showing particularly low numbers of returnees, the overall trend is unmistakably positive. The often more visible efforts to resolve refugee issues have also had a positive impact on the IDP populations in certain circumstances.

21. *Progress made in the area of return.* In the entire region, the international community has put emphasis on creating conditions conducive to the return of those displaced in the immediate aftermath of the conflicts in Croatia, Bosnia and Herzegovina and Kosovo. A successful return of IDPs is based on three elements: ensuring the safety and security of returnees, returning property to the displaced and reconstruction of their houses, and creating an environment that sustains return, that is, which allows life under normal conditions in the area of return. National authorities at all levels and the international community have achieved impressive results.

22. Notwithstanding some security concerns, the first element is basically in place throughout the region, except for Kosovo where, despite progress in recent months, the situation continues to be uncertain and many displaced persons therefore hesitate to return.

23. The second element is on the way to full realization in Bosnia and Herzegovina where restitution of property has been achieved in almost all cases and only a small number of disputes remain unsolved; however, a large number of houses and apartments need repair or reconstruction. Croatia has almost finished returning houses and apartments to the remaining persons displaced inside the country or providing them with alternative accommodation; however, cases remain of owners being prevented from repossessing their property. In Kosovo, ownership has been clarified in most cases but most properties have not yet been repossessed by their owners, and resources necessary to repair and rebuild accommodations are often insufficient.

24. The third element, the conditions for a sustainable return, is the biggest challenge for IDPs. The lack of such conditions is one of the main obstacles to return and has caused the overall rate of returns in many parts of the region to slow down. Even in areas where substantial resources have been invested to enable the return of IDPs, significant questions as to the long-term durability of the situation remain. There are many cases where returnees have left again after a short while, or where only the elderly, but not families with children, have returned. Obstacles to sustainable return include prolonged and unjustified delays in connecting reconstructed houses of minority returnees to water and electricity; discriminatory practices in denying minority returnees access to jobs in public service and private employment; unavailability of schools responding to the language and other educational needs of returnees; problems with access to pensions and health insurance in case of return; provocative use of national and religious symbols by some local authorities, making minority returnees feel unwelcome and discriminated against; a weak rule of law, especially at the level of certain municipalities; the unwillingness of police authorities in some places to investigate incidents of harassment; a weak and overburdened judiciary; and continuing impunity for war

crimes and crimes against humanity. Thus, many returnees face specific difficulties relating to insufficient respect for their human rights. The Representative calls on the authorities of the countries concerned, as well as the international community, to address these problems vigorously.

25. *Focus on return as an obstacle to local integration.* The efforts of the international community and national authorities have been focused almost exclusively on return. Consequently, local integration, allowing IDPs to integrate into the local economy and to gain access to housing outside collective shelters, has been neglected or even discouraged, even though it has occurred in numerous cases. While the Representative acknowledges the importance of highlighting return in the region, he would like to stress that allowing internally displaced persons to integrate locally and live a normal life and their return to their places of origin are not mutually exclusive, but actually reinforce one another. Well-integrated people are more apt to lead productive lives; this is likely to give them the strength and the impetus necessary to return to their places of origin, once the time is right. Experience from other contexts has shown that the quicker displaced persons resume productive lives, the more likely they are able to exercise free choice, which can mean return, even if it entails facing new challenges.

26. *Urgent needs of most vulnerable groups.* The Representative was struck by the disproportionately high percentage of particularly vulnerable groups among IDPs, whose situation has still not been satisfactorily resolved. These groups include the elderly, the ill, the disabled, severely traumatized individuals, witnesses in war crimes investigations and trials, female headed households, families of missing persons, and members of minorities, including Roma. Many IDPs belong to several of these categories at the same time. In this case, their disadvantage is exacerbated and becomes particularly acute. Typically, these extremely vulnerable persons remain in collective centres, informal settlements or in other arrangements which were never conceived as providing long-term solutions. These persons are often not capable of living on their own. Even in the event of dramatic changes, they are unlikely to return to their places of origin on their own. The Representative therefore recommended that national and local authorities, in coordination with international agencies and donors, urgently seek durable solutions for these persons, including appropriate institutional arrangements such as social housing, foster families or homes. After his return, he brought this matter to the attention of OCHA, UNICEF, the World Bank and bilateral donors.

27. *Deteriorating accommodation.* Thousands of IDPs continue to live in collective centres in very difficult conditions. The international community has withdrawn its support from many of these centres and no more money has been invested in their maintenance. Many buildings are ramshackle and no longer offer acceptable living conditions. Irregular settlements have sprung up where displaced Roma, Ashkali and Egyptians live in misery. The Representative therefore recommended continuing with the closure of the collective centres, provided adequate housing solutions for their populations can be found, and undertaking the most urgent repairs in those centres that cannot be closed now. In Kosovo, the Representative urged the immediate evacuation of the mostly Roma families affected by lead poisoning in camps in northern Mitrovica in a way that affects their right to health and physical integrity and welcomes the steps taken in this regard by the United Nations Interim Administration Mission in Kosovo (UNMIK) since his visit.

28. *Lack of awareness of rights, coupled with administrative obstacles.* Many IDPs are marginally aware of the rights to which they are entitled, both under domestic and international law. Others are unable for practical reasons to access entitlements and remedies provided in Government offices. These disadvantages are coupled with local administrative systems which too often have cumbersome and complex requirements, particularly in the area of documentation and registration. This frequently results in aggravated helplessness, disorientation and disempowerment suffered by IDPs, who become even more firmly locked into their existing situations. Obstacles to access to health care, education, social security benefits and other State services or to the labour market can easily become insurmountable. Since there seems to be no social safety net for those who fall outside the system, those who have not managed to get into the system, owing to the burdensome administrative practices, are further marginalized and pushed into the informal economy. The Representative thus recommended accelerating administrative reforms with a view to simplifying the administrative registration requirements and processes for all people. He underlined that particular attention should be paid to the additional difficulties IDPs have to face when trying to regularize their situation.

29. *Discriminatory practices with respect to minorities.* The Representative encountered practices that discriminated against Roma and other minorities. Members of these groups frequently have had problems providing proof of their origin. Especially in Serbia, they often have been thwarted in trying to establish a legal address, or otherwise denied access to adequate information on legal and practical options available to them and ways of exercising these possibilities. As a result, these minorities are marginalized and vulnerable and are exposed to the further risk of discriminatory treatment by local authorities and other parts of society. The Representative called upon national and local authorities to ensure that members of minorities can meaningfully exercise practical and legal access, on an equal basis, to the entitlements which exist. In doing so, it is important to sensitize authorities to the particular needs of these groups, as well as inform such groups, in a culturally appropriate fashion, of their rights and entitlements, and how these may be realized.

30. *Safeguarding the future.* For the region, important decisions lie in the short- to medium-term future and are already under debate in various forums. These include questions of accession to the European Union by Croatia and Bosnia and Herzegovina. The continuation of the current federated State of Serbia and Montenegro may soon require a definitive resolution, and the long-term status of Kosovo is increasingly under discussion. Given these developments, the Representative considered it important to identify those factors and risks which may affect the rights of the IDPs in the region and to identify issues which will need to figure in the arrangements that are struck by and between States in each of these areas in order to avoid new problems for the displaced. It is key that the new arrangements do not create new IDPs; safeguard the rights of the displaced, including to return, to protection of their property and its restitution or compensation, and to pension benefits; and take measures to make sure that no internally displaced persons become stateless. Furthermore, the number of remaining internally displaced persons should be reduced by achieving durable solutions, once the final status of the relevant regions and States is decided.

31. Finally, the Representative took note of the concerns expressed to him by many interlocutors that the massive return of former refugees or rejected asylum-seekers from certain Western European countries would add to the burden caused by internal displacement in the different parts of the region, particularly if they were not able to return to their homes. He appeals to the Governments concerned to implement such returns cautiously. He further urges them to refrain from returning members of threatened communities and particularly vulnerable persons to situations where they would risk becoming internally displaced persons without the necessary assistance and protection of their rights.

C. Working visit to Turkey

32. The Ministry for Foreign Affairs of Turkey invited the Representative to Ankara for a working visit from 4 to 6 May 2005. Apart from meetings with relevant ministries and State institutions, he attended a workshop on the "Turkey Migration and Internally Displaced Population Survey" organized by the Hacettepe University Institute of Population Studies in Ankara, and participated in a training workshop on the Guiding Principles on Internal Displacement for deputy governors and other officials conducted by the Norwegian Refugee Council and co-sponsored by the Brookings-Ben Project on Internal Displacement. All meetings were informative and constructive. The Representative was impressed by the willingness shown by his interlocutors to approach the issue of internal displacement with an open mind, to develop a strategy that addresses all obstacles to return in a comprehensive manner, and to provide the necessary means to ensure a successful implementation.

33. In the Representative's view, the activities and envisaged steps were important as many of the IDPs had been or were still living in urban areas in conditions of extreme poverty with limited or no assistance from authorities. In the past, some of them had faced obstacles to return. Although the Government had pursued return programmes, including the Return to Village and Rehabilitation Project, with considerable success in some areas, overall progress had been slow and many problems remained to be solved. In this context, current efforts such as the study presently being undertaken by the Institute of Population Studies of Hacettepe University, ongoing efforts to prepare an "Integrated Strategy Document on IDPs in Turkey", and the implementation of Law No. 5233 on the Compensation of Losses Resulting from Terrorist Acts and the Measures Taken Against Terrorism were very positive and of the utmost importance.

34. The Representative recommended to the Government that it use in its laws and policies a definition of "internally displaced person" that was in line with international standards as laid out in the Guiding Principles on Internal Displacement, reflecting the two core elements, i.e. the involuntary nature of the movement, whatever the reasons, and the fact that the persons concerned remain inside their own country.

35. Concerning the number of IDPs, the Representative took note both of the official figures given to him as well as of the much higher estimates by non-governmental organizations. He was also aware of the complexity of identifying the number of IDPs in Turkey owing to the nature and magnitude of economic migration from the rural areas in eastern Turkey to the cities and the western parts

of the country, and to the fact that a considerable number of IDPs had either returned or no longer regarded themselves as IDPs, having started a new life elsewhere in Turkey. However, experience has shown that in situations like Turkey the number of those registered was often much lower than the real figure. The Representative commended the Government of Turkey for having asked the Institute of Population Studies to prepare a study on the number and the situation of IDPs in Turkey as an important contribution to a discussion on and the solution of internal displacement in Turkey.

36. Concerning the draft "Integrated Strategy Document on IDPs in Turkey", the Representative welcomed the assurances given to him by the authorities that this document would reflect the Guiding Principles on Internal Displacement to a considerable extent and suggested that an explicit reference to the Guiding Principles be made in its final version. He also welcomed the fact that the strategy was to be based on the basic principle that IDPs had the choice to voluntarily return to their former places of residence or to integrate in another part of the country. The willingness to address potential obstacles to return such as the perceived role of village guards or the presence of landmines was also very important, as was the readiness to devote the necessary resources for the reconstruction and upgrading of the required infrastructure. While the plan to provide support mainly to centrally located villages might be sound from a development perspective, great care would be necessary to make sure that returnees still had access to their fields and their livelihoods. In this regard, the Representative recommended close consultation with returnees in order to avoid a situation where IDPs, despite the reconstruction of infrastructure and houses, would not return because they were cut off from their lands. It was also advisable to address — together with the problem of urban poverty affecting other persons — the living conditions of those IDPs who opted to remain in urban areas but whose living conditions were extremely poor.

37. Finally, the Representative observed that the application of Law No. 5233 on Compensation was important and the work begun by the Damage Assessment Commissions encouraging. He fully supported the extension of the deadline for applications by one year since many of those entitled to receive compensation, many of whom are IDPs, may need more time to prepare them. He worried about the high number of unsuccessful applications and highlighted the importance of the compensation mechanism not only for the IDPs who planned to return but also for those who wanted to remain in their present homes or resettle in another part of Turkey: in many cases, compensation would enable them to start a new life.

IV. Internal displacement as a result of natural disasters

38. From 27 February to 5 March 2005, the Representative undertook a working visit to Colombo, and Bangkok, with the consent of the Government of those States, to attend a number of working meetings and seminars on the protection of IDPs with a particular focus on the response to the tsunamis of 26 December 2004. The main objective of the visit was to discuss with various actors from this region affected by the tsunamis the human rights situation of persons displaced by the tsunamis, and to identify and recommend next steps to ensure better protection in the international, regional and national response to this and other natural disasters. The visit was particularly timely as the response was shifting from the immediate humanitarian emergency phase to the recovery and reconstruction phase.

39. The Representative had an opportunity to examine the challenges of protecting the human rights of internally displaced persons in the context of natural disasters. He concluded that (i) displaced persons, in fact, may experience human rights problems in situations of natural disasters; (ii) the Guiding Principles on Internal Displacement are applicable to such situations and provide appropriate guidance in addressing the protection needs of those displaced due to disasters; (iii) there is a need to monitor the human rights of persons displaced by natural disasters during the emergency as well as the reconstruction; (iv) the international community needs better preparation to address the human rights challenges posed by natural disasters.

A. Human rights problems faced by IDPs due to natural disasters

40. The tsunamis of 26 December 2004 left in their wake more than 300,000 people killed, 500,000 injured, countless missing, and more than 1 million IDPs, mostly in South and South-East Asia, but also in parts of East Africa. In the immediate aftermath of the disaster, efforts focused, as might be expected, on search and rescue, bringing clean water, food, clothing, medical care and shelter to survivors, and identifying and burying the vast number of dead. The response, local to global, in addressing these emergency needs was unprecedented.

41. The Representative found that much less attention had been devoted to issues of human rights protection, such as unequal access to assistance, discrimination in aid provision, enforced relocation, sexual and gender-based violence, recruitment of children into fighting forces, loss of documentation, safe and voluntary return or resettlement, and issues of property restitution, which had also arisen and needed to be addressed in the context of the tsunamis. The experiences of natural disasters in other parts of the world showed that there is a risk of human rights violations when displacement lasts and the displaced cannot return to their homes or find new ones after some weeks or months. In the context of natural disasters, discrimination and violation of economic, social and cultural rights tend to become more entrenched the longer the displacement lasts. Often, these violations are not consciously planned and implemented but result from inappropriate policies. The Representative found that they could easily have been avoided if the relevant human rights guarantees had been taken into account from the beginning.

42. Members of civil society participating in the Asian Civil Society Consultation on Post-Tsunami Challenges (13-14 February 2005) listed as major areas of concern: the transparency and accountability of funds raised and received; the need to place people before corporate interests; the required synergy and cooperation based on humanitarian principles of neutrality, impartiality, universality and non-discrimination; and the importance of empowering local communities and NGOs. They stressed the need for a rights-based approach to humanitarian assistance that would include in particular the application of international human rights norms and standards, particularly the right to participation, the right to livelihood (food, health, housing, etc.) and non-discrimination (against minorities, marginalized people, women, children and so on).

43. That these and other protection concerns emerged in the aftermath of the tsunamis underscored that it is just as important to examine and address situations of displacement through a "protection lens" in the context of natural disasters as it is in

cases of displacement due to armed conflict. Indeed, doing so is essential for a comprehensive and effective humanitarian response.

B. The relevance of the Guiding Principles on Internal Displacement to situations of natural disasters

44. The Guiding Principles on Internal Displacement recognize that persons forced to leave their homes share many common types of vulnerability regardless of the underlying reasons for their displacement. Thus, the Guiding Principles use a broad notion of "internally displaced persons" as persons "forced or obliged to flee or leave their homes or places of habitual residence" for an array of reasons including "natural disaster". Although the major human rights treaties upon which the Guiding Principles are based do not directly refer to internal displacement, the protections these instruments provide certainly apply to displaced persons, including those displaced by natural disasters. Likewise, when natural disasters strike in the context of ongoing armed conflicts, the requirements of international humanitarian law continue to apply.

45. At the heart of the Guiding Principles, and of the international human rights and humanitarian law on which they are based, is the concept that States bear the primary responsibility for the protection of persons under their jurisdiction (principle 3). At the same time, and in accordance with international humanitarian law, the Guiding Principles also apply to non-State armed groups, which is important as some persons displaced by the tsunamis are located in areas controlled by such groups. Indeed, the Guiding Principles provide guidance to all actors with a role to play in addressing internal displacement.

46. Natural disasters present particular challenges for the fulfilment of national responsibility as regards protection from displacement. Earthquakes, floods, tornadoes, tsunamis and other natural disasters are beyond the capacity of any State to prevent. However, States can and should seek to mitigate the human toll of such natural phenomena, including by ensuring effective early warning systems. Indeed, as affirmed in the Hyogo Declaration adopted at the World Conference on Disaster Reduction held in Kobe, Hyogo, Japan, in January 2005, "States have the primary responsibility to protect the people and property on their territory from hazards and ... to give high priority to disaster risk reduction in national policy, consistent with their capacities and the resources available to them".[3]

47. Disaster risk reduction is not just a matter of good governance, but addresses the fundamental rights of populations at risk. Guiding principle 5 states that authorities and international actors are obligated to "respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons". Thus, for example, as the United Nations Special Rapporteur on the right to housing as a component of the right to an adequate standard of living has pointed out, the right to "habitable" housing implies that adequate provisions must be made in housing codes and then properly enforced to ensure that residences are prepared, to the extent possible, to withstand the effects of earthquake.[4] Moreover, national law should empower affected individuals to assert these rights, for example, through mechanisms to claim compensation where

public officials have failed to take reasonable measures to protect populations and prevent displacement due to disasters.

48. Not all displacement from disasters can be prevented, even when every reasonable precaution has been taken. Accordingly, it is also necessary to be prepared to respond to protection issues arising from such displacement. Although much depends on the specific context in which the disaster occurs, typical problems in such situations include the following.

49. *Access to assistance*. Internally displaced persons have the right to request and to receive protection and assistance from national authorities, who, in turn, have the primary duty and responsibility to protect and assist populations within their jurisdiction (guiding principles 3 and 25 (1)). In the context of natural disasters, States must in general be willing to respond quickly to provide humanitarian assistance to affected populations and refrain from blocking access to those in need, where they are themselves not in a position to provide adequate assistance to their own populations. Other restrictions on the delivery of aid, such as excessive delays in obtaining the necessary permits to reach affected populations, should also be avoided. Civil society and local NGOs, usually at the forefront of efforts to assist and protect populations at risk, should be considered as partners in national efforts and consulted in the design and implementation of programmes. All possible measures should be taken to ensure that they have safe and unhindered access to the displaced and can undertake their humanitarian work and advocate for the rights of the displaced without risk of punishment or harm.

50. *Non-discrimination*. After natural disasters, discrimination may arise in the distribution of humanitarian and reintegration assistance as well as decisions regarding relocation and resettlement. As affirmed in the Guiding Principles, assistance and other interventions in response to natural disasters must be undertaken in accordance with the long-established principle of impartiality, without discrimination on the basis of race, ethnicity, religion or other characteristic (e.g. caste) (principles 4 (1) and 24 (1)). It is necessary to avoid discrimination between persons displaced by different causes, such as in cases where natural disaster strikes areas with existing populations displaced as a result of armed conflict or civil strife and where, for instance, assistance is provided to one group and not to another, or where the different groups are entitled to different standards of assistance. Inequities in aid distribution not only violate the principles of impartiality and non-discrimination; they also risk creating resentment and tensions between communities, which can complicate the rehabilitation and reintegration of IDPs and threaten their security. Instead, opportunities should be seized to counter pre-existing patterns of discrimination by ensuring an inclusive response.

51. *Protection of women and children*. Displaced women and children face a range of particular risks, and the Guiding Principles accordingly call for special attention to their needs (principle 4 (2)). They experience heightened vulnerability to sexual and gender-based violence, especially in camps, where increased levels of domestic violence and child abuse are a danger. When food is not delivered directly to women, and when they are excluded from camp management and the design of relief and reintegration plans, women's vulnerability to sexual exploitation and abuse increases dramatically. Women also have special needs in the areas of health services and reproductive health. Trafficking is an additional risk when people are

displaced, families separated, children are orphaned and livelihoods destroyed. Children in particular risk recruitment into the ranks of fighting forces.

52. *Access to education.* Returning to school as quickly as possible after a natural disaster is important not only to minimize the disruption to children's education, to which they are entitled by right (guiding principle 23), but is critical for their psychosocial well-being. School attendance can reduce children's exposure to risks, including trafficking and military recruitment. Moreover, access to education for non-displaced as well as displaced children will also be constrained where IDPs are sheltered in school buildings. Resettling IDPs to more appropriate temporary accommodations, with adequate support and in close consultation with the displaced, is therefore important for access to education not only for IDPs but also for children from the broader community.

53. *Loss of documentation.* The loss of personal documentation commonly occurs in situations of displacement, particularly in cases of natural disaster, and can lead to access to public services, such as education and health care, being denied as well as problems in resolving issues of property restitution or compensation. Obtaining replacement documentation often can be difficult and time-consuming. The Guiding Principles specify the right of IDPs to obtain, without unreasonable requirements, all necessary documentation for the enjoyment and exercise of their legal rights, as well as the right of women to documentation issued in their own names (principle 20). This is the responsibility of the authorities.

54. *Participation of internally displaced persons.* In the interest of time-efficient management of assistance efforts, there is a tendency to centralize decision-making. IDPs can thus find themselves shut out of planning about the location and layout of camps and settlements, the manner in which aid is distributed, the type of food and other items supplied, and other matters central to their daily lives. IDPs' exclusion from the decisions that affect their lives can heighten the sense of helplessness inflicted by a natural disaster, undermine the effectiveness of humanitarian assistance, and even put IDPs' physical security at risk, in particular that of women. Even where IDP participation is sought, women again often are left out, even though they have specific protection, assistance and reintegration needs that, in the absence of consultation, risk not being addressed. Consultation with the displaced is critical in all phases of displacement, and therefore is a theme that runs throughout the Guiding Principles. Special efforts should be made to ensure the full participation of IDPs in the planning and management of their return or resettlement and reintegration (principle 28 (2)), as well as in the distribution of assistance. Special care must be taken to seek out and include the women.

55. *Durable solutions.* After the emergency stage of a disaster is over, displaced persons will usually require assistance to rebuild their lives. National authorities have the primary duty and responsibility to facilitate this by establishing the conditions, as well as providing the means, for IDPs to return voluntarily, in safety and dignity, to their places of origin or to resettle in another part of the country and to facilitate their reintegration (principle 28). In addition to rebuilding homes and other infrastructure, this may include assistance to enable the displaced to re-establish previous livelihoods (e.g. rehabilitating damaged agricultural land, business assets, fishing boats, etc.) or providing the displaced with training and assistance for developing new sources of income. Return home may be hindered for various reasons. Governments may declare certain areas "buffer zones" or

"exclusion zones" where reconstruction is forbidden. Such scenarios have implications for IDPs' freedom of movement and, in some instances, property rights and their ability to make a living (e.g. in the case of fishermen barred from living near shore). International norms call for a balancing of the rights of those affected with the interests of the State in mitigating the damage and ensuring public safety, and for an opportunity for judicial review of the decisions. Where the authorities determine that such exclusion zones legitimately should be enforced, such decisions should be taken in close consultation with the displaced, who should receive compensation for property and land lost as a result as well as assistance in relocating and re-establishing their livelihoods and residence elsewhere (principles 7 and 28). IDPs may also choose not to return to their original homes, particularly if their displacement is protracted and they have begun rebuilding their lives elsewhere. Authorities are sometimes anxious to promote return as a symbol of normalization after the chaos brought on by a disaster. However, they should respect IDPs' right to choose whether to return to their place of origin or to resettle elsewhere, and in either case are expected to assist them to reintegrate (principle 28).

56. *Property issues*. Property issues may pose especially complex problems, particularly where a natural disaster has wiped out landmarks used for demarcation. In some areas, residents may not possess formal titles or other evidence of land ownership in the first place. Where they are used, property records, both individual and those maintained by authorities, may have been destroyed as a result of the disaster. Moreover, rules on registration and inheritance may discriminate against women, who then experience particular difficulty regaining their homes and property, especially when their husbands have been killed. Such issues are inevitably legally complicated. Past experience in other countries confronting similar issues following displacement has shown that the designation or establishment of one or more dedicated administrative or quasi-judicial bodies to handle property claims with a mandate for mediation, adjudication (subject to appeal to courts), and providing flexible types of remedies is the most effective way of handling such large-scale property issues. Addressing the property issues resulting from displacement crises can also be an opportunity to remedy long-standing inequities or inefficiencies in registration and cadastral schemes as well as modify laws and policies to ensure that customary rights and non-traditional forms of proof of ownership are given due regard, as appropriate in the domestic circumstances.

C. Monitoring

57. As already noted, international law provides that primary responsibility for protecting and assisting internally displaced populations rests with the Government of the country concerned. In order to enable national Governments to fulfil their responsibilities and to address emerging human rights problems, it is necessary constantly to monitor the human rights situation of those displaced by natural disasters. National human rights institutions (NHRIs) can play an important role in promoting national responsibility and reinforcing protection of the rights of IDPs, in particular by identifying patterns of violations or systemic problems so as to enable Governments and agencies to address them at an early stage. It is encouraging that a number of NHRIs in States most affected by the 26 December tsunamis are engaged

in protection activities relating to the disaster, including by drawing attention to the human rights dimension of the crisis, monitoring protection concerns, investigating complaints, examining issues of property restitution and highlighting the need for responses to be in conformity with the Guiding Principles. The Representative also welcomes the fact that the representatives of the national human rights institutions of the affected countries (India, Indonesia, Maldives, Sri Lanka and Thailand) at a meeting in Bangkok in March 2005 agreed to work on developing a common methodology for this role, in coordination with the Asia Pacific Forum of National Human Rights Institutions. These activities could provide a model for human rights monitoring during and after future natural disasters.

D. Improved preparedness of the international community to address the human rights dimension of natural disasters

58. During his visit, the Representative noted that while United Nations agencies, international non-governmental organizations, donors and other international actors engaged effectively and successfully in providing humanitarian assistance at unprecedented levels during the emergency relief phase, most of them were not sufficiently aware of the human rights dimension of displacement caused by natural disasters. At the same time, most interlocutors responded positively to the points raised by the Representative and were in favour of incorporating a human rights-based approach in developing and implementing a response to natural disasters, in particular during the reconstruction phase. They recognized that there was an inherent risk of an inadequate response if the human rights dimension were neglected. Although there were also words of caution expressed on the need to strike a balance in the immediate emergency phase between championing human rights and reaching as many people as possible, there was wide agreement that while a human rights focus had been largely absent in the initial phase of the response to the 26 December tsunamis, once the immediate emergency phase was over, it was important to include human rights in the next phases.

59. The Representative urged the United Nations agencies to better integrate a rights-based approach in the programming and implementation of the projects listed in the Tsunami Flash Appeal and to include specific human rights projects, e.g. as regards the protection of property, the rights of women and children and the protection of minorities and indigenous peoples. He furthermore encouraged the Office of the High Commissioner for Human Rights (OHCHR) to become more involved now that the emergency phase is over, in particular by supporting the national human rights institutions in their monitoring role and advising the relevant actors.

60. While stressing that national Governments have the primary duty and responsibility to ensure the protection of IDPs, the Representative suggested that the international actors involved in the response could also find useful guidance in the Guiding Principles. In this regard, the Representative recommended that OHCHR and OCHA, in consultation with relevant partners, jointly develop guidelines on human rights for humanitarian and human rights actors in situations of natural disaster, in particular with regard to IDPs, which could provide practical operational guidance to the members of the Inter-Agency Standing Committee on the ground. The response to this suggestion was positive and the preparation of such guidelines is presently under way.

V. The Representative's mainstreaming of the human rights of IDPs within the United Nations system

61. Since assuming his position, the Representative has continued the work begun by his predecessor, within the general programme of human rights mainstreaming, in increasing the focus given by United Nations agencies to the human rights of internally displaced persons in situations of humanitarian crisis. The Representative has collaborated with OCHA-IDD in the elaboration of institutional and practical arrangements, and has participated in the meetings of the Inter-Agency Standing Committee to ensure that this policy forum considers issues falling within the Representative's mandate. In this context, he has contributed to the Humanitarian Response Review undertaken under the leadership of the Emergency Relief Coordinator at a systemwide level. The Representative has also pursued dialogue at senior levels with OCHA, the Department of Peacekeeping Operations and the Department of Political Affairs, the United Nations Development Programme (UNDP) and the Office of the Special Envoy of the Secretary-General for Tsunami Recovery to sensitize these actors to his mandate and explore areas for future mutual cooperation in the IDP context.

62. Apart from the guidelines on human rights for humanitarian and human rights actors in situations of natural disasters mentioned in paragraph 60, the Representative is currently examining the possibility of drafting joint guidelines on the electoral participation of IDPs, together with the Department of Political Affairs, and is working on the inclusion of women IDPs' rights in cooperation with the Special Adviser to the Secretary-General on Gender Issues and the Advancement of Women. He has encouraged NGOs to send IDP-specific input to the treaty bodies in order to ensure mainstreaming of IDP issues within these bodies. Furthermore, he has been asked to provide comments on several reports drafted and evaluations commissioned by the United Nations Secretariat, as well as to UNDP in the reformulation of its IDP policy.

63. In addition to these contributions on systemic issues within the United Nations system, the Representative has also been alert to mainstreaming the human rights of internally displaced persons into United Nations action on country-specific situations. This mainstreaming includes both advocating, where appropriate, for recognition of a particular situation as one of internal displacement, attracting in turn the application of the Guiding Principles on Internal Displacement, as well as highlighting context-specific issues and needs of the persons affected in the particular situation. On this basis, with respect to the situation in Zimbabwe arising out of "Operation Murambatsvina", the Representative engaged with the Resident Coordinator and the Secretary-General's Special Envoy on Human Settlements Issues in Zimbabwe with respect to issues of internal displacement in that country. The Representative also engaged with other components of the United Nations system with relevant roles in the same issues. In undertaking these efforts, the Representative coordinated his action with that being undertaken by other special procedures of the Commission on Human Rights and apprised the Government of Zimbabwe of his views. In reply, the Government conveyed to the Representative its response to the report of the Special Envoy.

VI. Conclusions and recommendations

64. **The Representative concludes that the new focus on the human rights of internally displaced persons conferred by his mandate enables him effectively to build upon the substantial work undertaken by his predecessor. Specifically, the human rights emphasis brings the entitlements of internally displaced persons under human rights, humanitarian and analogous refugee law explicitly to bear, and the Representative will frame the measures he takes on this basis. The rights framework also provides additional clarity to States, United Nations agencies and civil society addressing issues of internal displacement. The Representative welcomes the cooperation shown by Governments in the missions and working visits he has already undertaken and looks forward to working further with them as they respond to his recommendations. The Representative has also been encouraged by the response from United Nations agencies and considers that there is considerable scope for a more rights-focused approach in this area to be further elaborated in the future. In the Representative's view, his mandate brings specific added value to the activities and measures already being undertaken by States and other humanitarian actors and contributes to deeper strengthening of the practical and legal protection of all internally displaced persons.**

65. **In light of these considerations, and consistent with the Guiding Principles on Internal Displacement, the Representative makes the following recommendations:**

(a) **With respect to Nepal, the Government and insurgent forces are called upon to refrain from actions that would cause further displacement. The Government should, as a matter of urgency, recognize the internal displacement that has already occurred and take prompt measures to protect the affected populations. Specifically, the Government should develop a national policy on internal displacement consistent with the Guiding Principles, and donor States should stand willing to provide the necessary support to enable the prompt implementation of such a policy. The United Nations country team, for its part, should focus its protection strategies on internally displaced persons and orient its future assistance and protection work on the basis of the Guiding Principles;**

(b) **With respect to Croatia, Bosnia and Herzegovina and Serbia and Montenegro, including Kosovo, the respective Governments, and UNMIK in Kosovo, are called upon to intensify their search for long-term durable solutions for persons still displaced by the armed conflicts of the 1990s, with a particular view to accommodating the persons with particular vulnerabilities, such as ethnic minorities or the aged. Donor States should be willing to provide the necessary resources still required to fully and finally resolve the ongoing effects of internal displacement in the region. With respect to the international processes bearing upon issues of long-term status in the region, the international community should ensure that the decisions taken protect against any new displacement; safeguard the rights of the displaced, in particular with regard to return, property and access to pensions; ensure that no IDPs become stateless; and do not hamper the efforts to bring closure to the displacement that has been suffered across the region. Returns of former refugees or rejected asylum-seekers from their countries of refuge should be undertaken cautiously,**

in particular if they cannot go to their former homes, in order to avoid undue additional burdens on areas still grappling with the problem of internal displacement. Members of threatened communities and particularly vulnerable persons should not be returned to situations where they would risk becoming internally displaced persons without the necessary assistance and protection of their rights;

(c) With respect to Turkey, the Government is called upon to finalize, on the basis of the study of internal displacement being conducted by Hacettepe University, its "Integrated Strategy Document on IDPs in Turkey" and give prompt effect to this policy framework;

(d) With respect to the States stricken by the tsunamis of 26 December 2004, Governments and other relevant actors are called upon to base their activities in the current reconstruction phase upon the framework set by the Guiding Principles on Internal Displacement. Governments in affected countries should also encourage their respective national human rights institutions to assist in monitoring the efforts undertaken and in providing input into the ongoing development of policy aimed at achieving long-term solutions. The Representative also calls for the United Nations to complete the elaboration of guidelines on human rights and natural disasters and disseminate them so that the practical guidance may be of as much benefit as possible in this and future natural disasters;

(e) With respect to the ongoing efforts of the United Nations to craft a more effective institutional response to issues of internal displacement, the different components of the United Nations should promptly agree on and implement mechanisms that will ensure a comprehensive and clear division of responsibilities in the field and a clear line of accountability for systemwide action, particularly in the area of protection of IDPs. United Nations resident coordinators and country teams should in turn be provided with clear advice and appropriate resources necessary for effective implementation of the agreed policies.

Notes

[1] As of early August 2005, the Representative had received approval from the Government of the Sudan to undertake a mission to that country, which was planned for early autumn 2005.

[2] See E/CN.4/2005/84, specifically at paragraphs 42-44 and 73-80.

[3] Report of the World Conference on Disaster Reduction (Kobe, Hyogo, Japan, 18-22 January 2003 (A/CONF.206/6), Chap. I, resolution 1, para. 4).

[4] Press statement, "Bam tragedy must drive resolve towards development of safe housing standards" (7 January 2004), available at www.ohchr.org.

United Nations A/60/339

General Assembly

Distr.: General
7 September 2005

Original: English

Sixtieth session
Item 73 (b) of the provisional agenda*
Human rights questions: human rights questions including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Human rights defenders

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report submitted of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, submitted in accordance with General Assembly resolution 59/192 and Commission on Human Rights resolution 2005/67.

05-48285 (E) 200905

Summary

In this her fifth annual report to the General Assembly, the Special Representative of the Secretary-General on the situation of human rights defenders describes how human rights defenders fulfil a fundamental role in the preservation and restoration of peace and security and argues that, to be effective, international peace and security strategies must give particular attention to protecting the role and situation of human rights defenders.

The principal concerns and recommendations of the Security Council and the Commission on Human Rights, with respect to peace and security and human rights problems are dealt with to a great extent by human rights defenders, without whose action neither the Council nor the Commission would be as well informed of emerging problems; without the work of defenders, the calls for action by the Council and the Commission in their resolutions would be inadequately addressed, and may be more likely to fail.

Through their work defenders provide early warning of emerging problems, including of gross human rights violations, and can help to prevent problems from deteriorating further. Defenders are active in situations where peace and security has already collapsed, such as in armed conflicts, helping to protect the lives of civilians caught in conflict and, through their presence and activities, preventing violations. In many instances it is their constant monitoring that brings to light deviations from international human rights and humanitarian law by parties to a conflict. Allowing the international community to take action to save civilian lives or prevent gross violations of human rights. Human rights defenders make significant contributions to ending conflict and to peacebuilding by strengthening the rule of law, questioning impunity for past and ongoing violations, addressing the human rights factors that caused the conflict, and by calling for and supporting the establishment of democratic principles and good governance.

Despite human rights defenders' fundamental role, and sometimes because of it, they are themselves victims of killings, disappearances, torture, arbitrary arrest and detention, harassment and intimidation. They have also been prevented from gaining access to places, people and information relevant to their work. When defenders are prevented from conducting their work, the peace and security and related human rights objectives of the United Nations are much less likely to be attained. In these circumstances actual armed conflict is more likely to emerge and to continue for longer periods, with all the accompanying human rights violations and human suffering that this entails.

The report contains recommendations addressed to States individually and as members of the Security Council and the Commission on Human Rights, and to the United Nations Secretariat and specialized agencies. In particular, when considering the United Nations reform process and proposals for a reformed Commission on Human Rights and a Peacebuilding Commission, Member States should recognize the essential role of human rights defenders. Specifically, the Special Representative calls for due consideration to be given to ensuring that human rights defenders have adequate access to a reformed Commission on Human Rights. She urges the Council and the Commission to react more expeditiously to information on evolving peace and security and related human rights concerns reported by human rights defenders,

and to consider ways in which such information can be received by them in a timely manner. The Special Representative also strongly recommends that the United Nations Secretariat and specialized agencies consider and address their responsibility towards human rights defenders and respond to information on urgent human rights concerns, or to channel such information to the competent United Nations bodies.

The Special Representative recommends that the Office of the High Commissioner consider ways in which it can facilitate her recommendations, and recommends that the Security Council and the Commission on Human Rights give much greater attention to protecting human rights defenders. When defenders are silenced and prevented from undertaking their activities, the goals of protecting peace, security and human rights are seriously undermined.

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani

Contents

		Paragraphs	Page
I.	Introduction	1–4	5
II.	The contribution of human rights defenders to peace and security	5–25	5
	A. Defenders and early warning	9–10	6
	B. Defenders and armed conflict	11–14	7
	C. Defenders and peacebuilding	15–25	8
III.	Case studies	26–51	10
	A. The Darfur region of the Sudan	27–35	11
	B. Nepal	36–44	13
	C. Guatemala	45–51	15
IV.	Concerns that limit the role of defenders in addressing peace and security-related human rights violations	52–61	17
V.	Conclusions and recommendations	62–68	19

I. Introduction

1. The present report is the fifth annual report submitted to the General Assembly by the Special Representative of the Secretary-General on the situation of human rights defenders. It is submitted pursuant to Commission on Human Rights resolution 2005/67 and General Assembly resolution 56/163. In the report, the Special Representative describes the role of human rights defenders in addressing peace and security through their human rights work and argues that, to be effective, international peace and security strategies must give particular attention to protecting the role and situation of human rights defenders and to taking account of their work in all initiatives taken in this context.

2. The preservation of peace and security is a core objective in the Charter of the United Nations. The implementation and respect of fundamental human rights can be described as a second core objective of the United Nations, as initially reflected in the Charter and then laid down more precisely in the Universal Declaration of Human Rights. The intervening years have eloquently illustrated how closely linked these two objectives are: human rights violations are almost always the underlying cause, or the consequence, of a deterioration in peace and security. Bringing an end to armed conflict and restoring peace and security typically require progress in addressing ongoing human rights violations and ending impunity for past violations. Most recently, the Secretary-General in his report "In larger freedom ..." (A/59/2005) drew clear parallels between peace and security and human rights, calling for more effective action to protect human rights in the context of threats to peace and security.

3. In spite of their essential role, the protection of human rights defenders and their work is still not adequately emphasized within the United Nations system. As a result, efforts by States and United Nations bodies to protect peace and security have a lesser impact on the prevailing conditions, allowing for a greater risk of conflicts emerging from these conditions or continuing for longer periods.

4. The following sections of this report call attention to the serious obstacles that defenders are confronted with when trying to fulfil their role in preserving or restoring peace and promoting human rights. The report gives multiple examples of how the work of human rights defenders contributes to achieving the objectives of resolutions adopted by the Security Council and the Commission on Human Rights. The report ends with a concluding analysis and a series of recommendations addressed to States individually and as members of the Council and the Commission, and to the United Nations Secretariat and specialized agencies.

II. The contribution of human rights defenders to preserving peace and security

5. Patterns in Security Council and Commission on Human Rights resolutions that have identified peace and security concerns in specific countries reflect Member States' repeated preoccupation with a consistently similar set of factors. In the most general terms, the Council and the Commission's prime concerns are to restore peace, security and respect for human rights as quickly as possible, and to preserve life in the interim while a situation stabilizes. To this end, resolutions

identify the main threats to peace and security, groups of people who are most at risk as a result, and the main actions needed to protect these vulnerable persons and to re-establish peace, security and respect for human rights.

6. While, of course, situations differ from country to country and over time, the most common actions identified by the Council and the Commission in their resolutions can be divided into three, closely related categories. Firstly, resolutions call for a re-establishment of the rule of law, including respect for international human rights and humanitarian law and the ending of impunity. In this regard, resolutions often specify particular concerns, such as the killing of civilians, torture, or arbitrary arrest and detention. Secondly, resolutions call for the protection of civilians, humanitarian access and assistance to vulnerable populations, and frequently also call for special protections for displaced persons, women, children and other groups. Thirdly, and where relevant, resolutions call for peace negotiations and for the restoration or establishment of democratic institutions, principles and processes, such as elections.

7. Resolutions are addressed first and foremost to the Governments of the State (or States) where the peace, security and human rights concerns exist. Resolutions also call for action by the United Nations Secretariat and specialized agencies and sometimes by regional intergovernmental bodies. These resolutions are meant to serve as instructions, advice or guidelines to States and intergovernmental actors on the actions to be taken and the standards to be met.

8. It is more than likely that human rights defenders are already engaged with the issues, problems and solutions to the human rights or security crises addressed in these resolutions. The Special Representative considers that without the action of human rights defenders neither the Council nor the Commission would be as well informed of emerging peace and security or human rights problems. She considers, further, that without the work of defenders the calls for action by the Council and the Commission in their resolutions would be inadequately addressed, and may be more likely to fail.

A. Defenders and early warning

9. Regular monitoring and reporting on human rights situations by human rights defenders identifies and calls attention to threats and changes in peace and security before they deteriorate into armed conflict, providing the Security Council and the Commission on Human Rights with opportunities to take preventive action. For example, human rights defenders in Rwanda documented systematic human rights abuses against ethnic minority populations within the country for many years before the 1994 genocide. A number of new human rights organizations were established at the beginning of the decade, including, the Rwandan Association for the Defense of Human Rights, the Association of Volunteers of Peace, the Rwandan Association for the Defense of Human Rights and Public Liberties, and Kanyarwanda, and in 1992 Human Rights Watch included Rwanda as one of the countries on which its 1992 annual report focused. During the early 1990s, these human rights organizations and others recorded massacres and hundreds of individual killings, disappearances, torture and beatings and thousands of arrests, targeting primarily the Tutsi population, Hutu sympathizers or the Government's political opposition. They also

reported on widespread violations of the right of ethnic communities to freedom of movement, the right to education and labour rights. Human rights non-governmental organizations (NGOs) also reported on censorship of the press whenever efforts were made to report on violations or on corruption in Government.

10. Collectively, these violations were a clear indicator of the massive breakdown in peace and security that would follow. The documentation and reporting by national and international human rights NGOs encouraged the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions to visit Rwanda in 1993, and in his subsequent report to the Commission he warned that genocide might occur there (see E/CN.4/1994/7/Add.1). The Special Rapporteur's conclusions were prompted partly by the significant information presented to him by human rights defenders. If the reports of defenders and that of the Special Rapporteur had been acted upon, it is arguable that steps could have been taken to prevent the Rwandan genocide and the accompanied movement of roughly 3 million refugees and internally displaced persons which marked the beginning of a dramatic worsening of peace and security in the Great Lakes Region of Africa.

B. Defenders and armed conflict

11. Human rights are always increasingly at risk as peace and security begin to break down and a situation slides towards and into armed conflict. Defenders conduct missions into barely accessible regions of a country in conflict, interview victims and witnesses, conduct investigations, corroborate information, and then document and report on their findings. Their activities sometimes provide the only restraint on the behaviour of combatants and allow the international community to remain at least partially apprised of a changing situation.

12. According to some sources, armed conflict in the eastern regions of the Democratic Republic of the Congo is reported to have led to the deaths of 4 million people either from direct killings or from illness or malnutrition engendered by the context of armed conflict. In addition, the rights to education, to work, to family life, to housing and to health have all been violated on a massive scale. In spite of the high-risk environment, human rights defenders are extremely active both in the east and in the capital, Kinshasa. They investigate violations and their reports of the evolving situation have been used to inform the United Nations peacekeeping mission in the country, as well as other United Nations agencies.

13. In Afghanistan, Burundi, Iraq, the Democratic Republic of the Congo, the Sudan and other countries that are now experiencing or have experienced armed conflict in the past, both national and international humanitarian workers serve every single day as implementing partners for United Nations agencies. They deliver and distribute food, water, medication, clothing and other material assistance. They provide medical care and psychological support for victims of rape and other trauma. They help transport people when they are ready to return home. In internally displaced persons camps, and some refugee camps, displaced persons state categorically that the simple presence of these humanitarian workers provides them with a measure of physical protection from attacks. Through their different activities, human rights defenders help people to stay alive during periods of

conflict and they limit the extent of human rights violations among civilian populations.

14. There should be no hesitation in saying that without the work of human rights defenders, today, in countries where there is ongoing armed conflict, millions of people would be much more vulnerable to violations of their rights to life, physical integrity, liberty, food, health, adequate housing, education and many others, and the United Nations system would be much less well equipped to address the conflict.

C. Defenders and peacebuilding

15. The factors required for the restoration of peace and security are commonly identified in Security Council and Commission resolutions as including ending actual armed conflict, ending impunity, and re-establishing the rule of law and democratic principles. More specifically, resolutions have included references to the demobilization and reintegration of combatants, the voluntary return or resettlement of displaced persons, reconciliation between different population groups and the holding of free and fair elections. Implicit in any expectation of a lasting peace is that the causes of the initial conflict need to be addressed, such as discrimination against groups of a population or major social and economic inequality.

16. For example, the Security Council had expressed its concern with regard to peace and security in East Timor over a period of roughly 25 years. On 22 April 1976 the Council adopted resolution 389 (1976) on the situation in East Timor in which it recognized "the urgent need to bring to an end the continued situation of tension in East Timor" and referred notably to the "inalienable right of [its] people to self-determination". On 11 June 1999, the Council adopted resolution 1246 (1996) in which it noted with concern the assessment of the Secretary-General that the security situation in East Timor remained "extremely tense and volatile". In 1999, the United Nations organized a referendum through which the people of East Timor chose independence. The United Nations Secretariat was subsequently called upon to support East Timor through its transition to the independent State of Timor-Leste on 20 May 2002.

17. The long legacy of impunity for past human rights violations, the violence and destruction of infrastructure that followed the referendum, weak institutions, inadequate legislation and the sheer burden of establishing a new and independent State from its inception created an exceptionally challenging context for peacebuilding.

18. Human rights defenders have been active in Timor-Leste in addressing the core concerns of the United Nations. They have helped to strengthen Timor-Leste's legislation, lobbying the Government and advocating for early ratification of international human rights instruments and providing comments on the human rights implications of new legislation — such as the draft Penal Code — which will provide the foundation for the new country's legal system. In the first few months of independence, a coalition of Timorese NGOs published their assessment of the judicial system, expressing concern that inadequate training and resources were hampering the administration of justice and that without a properly functioning justice system true reconciliation based on respect for the rule of law and human rights could not be achieved. Defenders then identified specific weaknesses and

proposed workable solutions both to the Government and to the United Nations and international donors. With regard to impunity for violations over the past decades and during the referendum, defenders conducted workshops where civil society, victims and Government officials could discuss the advantages and disadvantages of future judicial options in an informed and open environment. Defenders have helped to articulate the concerns of past victims and have lobbied the Government, the United Nations and the wider international community to ensure that commitments to deliver justice are met. Defenders in Timor-Leste have worked closely with their Indonesian counterparts to lobby for prosecution of Indonesian officials thought to be responsible for violations in East Timor. They have monitored and reported on the ensuing judicial proceedings.

19. In Timor-Leste today there are NGOs working on development and on environmental issues, including oil and gas rights in the Timor Sea. Defenders have been providing input and commentary on the draft Petroleum Fund Act legislation which is designed to achieve accountability and transparency in the investment in and use of revenue generated from the State's petroleum reserves, which will be so crucial to its sustainable development. On 16 November 2004, the Security Council adopted resolution 1573 (2004) in which the Council recognized that "despite notable advances achieved in the last months, Timor-Leste has not yet reached the critical threshold of self-sufficiency ... in key areas such as public administration, law enforcement and security," but also commended "the people and the Government of Timor-Leste for the peace and stability they have achieved in the country, as well as for their continuing efforts towards consolidating democracy and building State institutions." Human rights defenders have helped take Timor-Leste off the agenda of the Council and the Commission on Human Rights. Without their work it is much less certain that Timor-Leste would have seen a degree of progress that is promising. Any optimism concerning the completion of this transition is based as much on the visible efforts of the human rights community as on governmental initiatives. At the same time, it is human rights defenders who continue to monitor this progress and ensure that the growth of a culture of respect for human rights and democratic freedoms is not obscured by State conduct or social trends. In sharp contrast to other countries whose situation has been discussed in this report, the Special Representative has received no reports of violations against human rights defenders in Timor-Leste. While the Special Representative cannot confirm the degree to which the overall environment for defenders is more conducive in Timor-Leste, she has taken note of information indicating that authorities welcome the contribution of human rights defenders. This has allowed defenders to play a more active and effective role in the country's progress towards democracy, human rights and development, which strengthens prospects for sustainable peace.

20. In Angola, Liberia and Sierra Leone, human rights defenders have been involved in demobilization and reintegration of combatants. Disarming combatants and ensuring that they are reintegrated into society and given professional training and job opportunities are essential not only to preventing a resurgence of conflict but also to preventing former combatants from using violent crime as a means of earning a living. In some conflicts, children have been recruited as soldiers and their demobilization can require specialist expertise, some of which is contributed by human rights defenders through programmes they have initiated in this regard. Humanitarian NGOs have also been at the forefront of efforts to clear landmines in

Angola and Afghanistan, so that the land is safe to be used again. All of these activities are central to ending a conflict and are commonly carried out by human rights defenders working through national and international NGOs, and sometimes as implementing partners for United Nations agencies.

21. In Rwanda, the countries of the former Yugoslavia and Sierra Leone, defenders have been deeply involved in efforts to address impunity for human rights and humanitarian law violations committed during the conflicts. Monitoring and reporting by human rights defenders during an armed conflict has been at the basis of decisions to launch a process of judicial accountability at a conflict's close, as was the case with the establishment of the Special Court and the Truth and Reconciliation Commission in Sierra Leone. The work of defenders has proven of great support to the international tribunals for Rwanda and the former Yugoslavia.

22. In Burundi, the former Yugoslav Republic of Macedonia and Kosovo, defenders have provided human rights training for judges, lawyers and police officers. In 2003, defenders provided critical comments on draft legislation in the former Yugoslav Republic of Macedonia, seeking to ensure that the right to information and other standards were adequately met. Their efforts have strengthened the rule of law.

23. Setting up an election system and the holding of free and fair elections help to legitimize power-sharing arrangements defined under initial peace agreements and introduce accountability of Government. In Cambodia, defenders conducted campaigns to explain the future elections to the general population, describing democratic rights and how to exercise the right to vote. In the three years since the end of countrywide armed conflict in Angola, defenders have helped to register many people in preparation for elections expected in 2006.

24. Finally, successful peacebuilding requires that the human rights concerns that were among the initial causes of the conflict be addressed. Human rights defenders in Angola over the last three years have taken on new roles commensurate with the post-conflict and peacebuilding stage of the country. They examine corruption issues, land rights, housing rights and the rights of linguistic or regional minorities and they support freedom of expression, thereby strengthening transparency and democracy.

25. The Special Representative emphasizes that it is primarily the engagement of defenders with a range of activities that are central and absolutely necessary to peacebuilding that is relevant to this discussion. The impact and success of these activities in restoring, building or preserving peace and security vary in the different situations under discussion. Human rights defenders do not account for every aspect of progress, and they do not replace the State. However, their activities do contribute to progress and to achieving a successful transition.

III. Case studies

26. To illustrate further the essential contribution of human rights defenders in addressing peace, security and human rights concerns, the Special Representative has selected a few of the situations that have been considered by the Security Council or the Commission on Human Rights and which reflect different stages of

Member States' concern for peace, security and human rights. The case studies presented are of countries from which the Special Representative received information on the situation of human rights defenders and their activities that had direct relevance to the situations that became the subject of concern for the Council or the Commission.

A. The Darfur region of the Sudan

27. On 30 July 2004 the Security Council adopted resolution 1556 (2004) in which it noted "its grave concern at the ongoing humanitarian crisis and widespread human rights violations" in Darfur. Specifically, the Council expressed concern with regard to: acts of violence and violations of human rights and international humanitarian law; attacks on civilians; rape; acts of violence with an ethnic dimension; the situation of women and children; forced displacement; the situation and safe and voluntary return of internally displaced persons and refugees to their original homes as a key element in the ultimate resolution of the crisis in Darfur; impunity and the investigation of atrocities and prosecution of those responsible; problems of humanitarian assistance and access; disarmament of the Janjaweed militia; violations of the Ceasefire Agreement; and the need to reinitiate peace talks. The Council determined that "the situation in the Sudan constitutes a threat to international peace and security and to stability in the region".

28. The various points listed in the Council's resolution correspond with those factors in Darfur which led the Council to determine that the situation in the Sudan was a threat to international peace and security. They also represent those concerns that the Council considered needed to be most urgently addressed and the actions that needed to be taken to re-establish peace, security and respect for human rights. The Council acknowledged the importance of human rights monitoring by welcoming the work done by the High Commissioner for Human Rights to send human rights observers to the Sudan. Human rights defenders' work in the Sudan has addressed the heart of most of the concerns expressed by the Council and is thus fundamental to achieving the Council's objectives in Darfur. Some examples are provided in the paragraphs below.

29. **Informing and alerting the Security Council and the wider international community**. Human rights defenders had actively addressed the human rights situation in Darfur for some considerable time prior to the complete breakdown of peace and security in the three Darfur states and before the Council's attention had been formally drawn to the region. In July 2002, the Sudanese Organization against Torture (SOAT) published a press release in which it stated, "SOAT is gravely concerned about the worsening situation of human rights in Darfur province ... [involving] conflict ... leading to the destruction and depopulation of villages and considerable numbers of people displaced and lacking food security and shelter". Throughout 2002, 2003 and 2004 SOAT and other organizations reported on, inter alia, killings, arbitrary arrest and detention, torture, judicial rights abuses and land and environmental rights concerns, which were leading to disputes between different tribes. In November 2003 a forum of African human rights organizations adopted and published a "resolution on the armed conflict in Darfur", calling for action to address human rights abuses in the region. The drawing of the Security Council's attention to Darfur in July 2004 was to a considerable degree a reaction to

the monitoring, investigation and reporting by human rights defenders, who had already raised all of the concerns listed by the Council in its resolution. It is fair to say that the work of the defenders was critical in defining the crisis and calling the attention of the international community to the situation developing in the Darfur region of the Sudan.

30. **Monitoring and reporting on violations.** Human rights defenders continue to collect information on ongoing human rights and humanitarian law violations. They document attacks on villages and individual killings, interviewing witnesses, obtaining the names of victims and alleged perpetrators. SOAT, the AMAL Centre, the Sudanese Development Organization and a number of other organizations and individual defenders have, for example, documented the many rapes reported in the vicinity of Darfur villages and IDP camps. They have provided medical and counseling assistance to the victims and are urging authorities to investigate individual cases. Other defenders have reportedly identified and provided support to internally displaced persons who are arrested and detained for raising concerns about violations or for their involvement with gathering vital information to facilitate or assist humanitarian activities in camps.

31. **Justice and ending impunity.** On 18 September 2004, the Security Council adopted resolution 1564 (2004) in which it requested that the Secretary-General establish an international commission of inquiry to investigate reports of violations of international humanitarian law and human rights law in Darfur and to determine whether acts of genocide had occurred. The Council specifically requested that the commission investigate "reports" of violations. On 31 March 2005 the Security Council adopted resolution 1593 (2005) in which it took note of the report of the Commission of Inquiry (S/2005/60) and referred the situation in Darfur to the International Criminal Court. Many of the "reports" referred to in resolution 1564 (2005) contained information gathered and published by human rights defenders. It would, therefore, not be inaccurate to say that defenders' work contributed directly to the situation in Darfur being transmitted to the Court. The importance of the presence of human rights observers is reflected in the Council's welcoming the improved access of international human rights non-government organizations to the troubled region. Not the least of the advantages of the presence of these NGOs is the availability of multiple sources of information. In addition to influencing the securing of international justice, defenders in Darfur receive victims of torture and beatings, investigate alleged violations, help victims to obtain medical and other assistance, and provide legal representation to ensure that police and judicial authorities provide an adequate response. Their work very probably also has a preventive effect. By continuing to report in detail on individual cases of violations and lobbying authorities to take action, defenders continue to contribute towards addressing impunity.

32. **Sustaining life; humanitarian access and assistance.** Defenders negotiate humanitarian access and deliver humanitarian assistance to the estimated 3.2 million refugees and internally displaced persons resulting from the Darfur situation. Humanitarian NGOs deliver both food and non-food items to IDP camps and provide clean water, health services and school facilities for children. IDPs and refugee populations currently have no alternative forms of support; the work of human rights defenders is thus essential to preserving the lives of these displaced persons.

33. **Protection and the voluntary return of displaced persons.** IDPs in the various Darfur camps consider that they are physically safer when NGO staff are present in the camps. A number of national and international NGOs maintain offices, clinics or warehouses in the camps, with their staff travelling into the camps each morning to provide humanitarian assistance. Attacks and arrests of people living in the camps tend to take place largely at night when NGO staff are not present. The monitoring by defenders of the human rights situation across Darfur and in rural areas is useful for displaced persons in camps as it provides them with information that helps them to assess whether it is safe to return to their homes. The monitoring and reporting of human rights defenders assures a minimum of accountability and has a preventive impact.

34. Human rights defenders continue to address critical human rights concerns that are relevant to what are believed to be the causes of the conflict and that need to be addressed for any lasting restoration of peace and security in the region. They are making an enormous contribution in limiting the impact of the conflict upon the civilian population. This contribution has been at great cost to their personal security and liberty. Journalists, lawyers, peace activists, humanitarian workers and members of non-governmental organizations have been targeted by closure of organizations, arbitrary arrests and detention, torture and ill-treatment, particularly at the hands of security and intelligence agencies of the State. In her report to the sixtieth session of the Commission on Human Rights (see E/CN.4/2004/94 and E/CN.4/2004/94/Add.3), the Special Representative expressed continuing and serious apprehensions regarding the security of human rights defenders, in particular peace activists in Darfur.

35. She welcomes the Security Council's call on the Government of the Sudan in resolution 1556 (2004) to establish credible security conditions for the protection of "humanitarian actors". She regrets, however, that the resolution does not address the serious issue of violations of the rights and imminent threats to the security of a large body of human rights defenders conducting activities in the context of the conflict in Darfur.

B. Nepal

36. The Commission on Human Rights in its resolution 2005/78 expressed deep concern about the situation of human rights in Nepal in the context of the ongoing conflict and focusing on four areas requiring action. Firstly, the resolution cited concern with regard to specific human rights violations, including, unlawful killings, disappearances, torture, sexual violence, forced displacement, mass abduction, extortion, forced recruitment and forced labour, arbitrary arrests, censorship, freedom of opinion and expression, and freedom of association. Secondly, the Commission expressed concern with regard to the situation of categories of persons, including civilians in general, women and children in particular, political leaders and activists, human rights defenders, internally displaced persons, refugees and journalists, as well as access of humanitarian organizations to those in need of assistance. Thirdly, the resolution focused on the rule of law and reflected concern as to respect for international humanitarian law, whether anti-terrorism and security laws and measures were in accordance with relevant international standards, impunity, and the independence and effectiveness

of the judiciary. And fourthly, the Commission called for peace negotiations, national dialogue with political parties, the restoration of multiparty democratic institutions, and the holding of free and fair elections.

37. As in the case of the Sudan, the Commission outlined priority concerns and actions that need to be taken for the restoration of respect for human rights. Human rights defenders are making major contributions to addressing all of these concerns; in some areas there has been almost no remedial action by any other actor. The following paragraphs provide a number of examples.

38. **Alerting and keeping Member States informed.** The work of human rights defenders was to a great degree at the basis of the Commission's decision to adopt such a broad resolution on Nepal. The neutrality and objectivity of their reporting on the situation in Nepal allowed the Commission to identify and condemn also those violations committed by the armed opposition group, a non-State party to the conflict. Information on a majority of the unprecedented number of 80 cases submitted to the Commission by the special procedures in 2005 was initially gathered and communicated to them by human rights defenders working in Nepal and internationally. This large body of cases provided the Commission with valuable information in assessing the human rights situation in Nepal and determining its course of action.

39. **Ongoing human rights violations**. The Asian Legal Resource Centre published a report in April 2005 describing practices of extrajudicial killings, forced disappearances and torture by the Nepali security forces. Other human rights defenders reported on the destruction of homes in Kapilabastu district in March 2005. Collectively, defenders have monitored, investigated and reported on all of the different violations cited by the Commission in resolution 2005/78. They have attempted to mitigate the impact of violations by, for example, visiting the victims of arbitrary detention and providing legal representation to the victims of torture. They have reported widely on all these violations, and have effectively opposed attempts to limit freedom of expression.

40. **Humanitarian assistance and protection.** Human rights defenders have been more active than any other actor in identifying IDPs displaced by the conflict in towns and rural communities and in providing them with food, clothing and housing. The Informal Sector Service Centre, an NGO, used its 2004 human rights yearbook to report on the situation of internally displaced persons, among others. In Biratnagar, in southern Nepal, a coalition of human rights NGOs works closely with the United Nations to coordinate assistance to internally displaced persons. The focus on IDPs by defenders helped to encourage a joint United Nations mission and a visit by the Representative of the Secretary-General on the human rights of internally displaced persons to Nepal in April 2005

41. **The law, impunity and the judiciary.** Defenders have struggled in Nepal to support the rule of law in multiple ways. They have publicized cases in which state of emergency legislation and anti-terrorism legislation have been abused in violation of human rights; they lobbied for the ending of the state of emergency and for the repeal of legislation and measures that are in contradiction with Nepal's human rights obligations; they have drawn cases to the attention of the judiciary and then monitored the fairness of judicial proceedings. For example, the Advocacy Forum, a Nepali NGO, is working for the identification and removal of weaknesses in the

judicial process that affect the respect for human rights, including failures to respect habeas corpus requirements and lack of access by detainees to legal counsel.

42. **Peace and democracy.** The Commission indicated its strong desire for the restoration multiparty democracy in Nepal, and for the holding of free and fair elections and, ultimately, peace. Defenders are contributing to these aims by working to ensure that political activists are not detained and free to function as a genuine political opposition in a democratic State. Defenders have challenged the introduction of legislation and measures that had been used by the State to arrest political opposition leaders and to prevent the public gathering and the organizing of their political supporters. Defenders have participated in public demonstrations in favour of peace and democracy.

43. The human rights situation in Nepal remains of major concern, and the conflict continues. However, human rights defenders have, at a minimum, succeeded in alerting the international community to a deteriorating peace, security and human rights situation. Their activities are not only directed towards ending the conflict, but in many ways are building the means for restoring and sustaining democracy, the most significant of which is an informed population capable of making the right choices based on support and respect for democratic practices.

44. The endangered situation of human rights defenders, including journalists and peace activists, is reflected in the Commission's concern for their physical integrity and safety. In resolution 2005/78 it called upon the Government of Nepal to immediately release all detained human rights defenders and to take appropriate measures to ensure their protection. The Special Representative welcomes the resolution of the Commission and recalls her report to the Assembly at its fifty-eighth session (A/58/380) in which she reported, inter alia, on the role and situation of human rights defenders under states of emergency. In that report she recommended measures for the security of human rights defenders and for safeguarding their right to monitor and report on emergency laws, measures and practices. She hopes that the Government of Nepal and international actors assisting the Government in implementing resolution 2005/78 will take note of those recommendations. She hopes, in particular, that the Office of the High Commissioner for Human Rights in Nepal in giving due attention to the situation of defenders will address the issues raised in that report through its programmes and activities.

C. Guatemala

45. For many years Member States have been concerned about the situation of peace and security in Guatemala in the context of the internal armed conflict that lasted from 1960 to 1996. The signing of the Peace Accords between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca in December 1996 marked the formal end to the internal armed conflict. On 20 January 1997 the Security Council adopted its last resolution 1094 (1997) on peace and security in Guatemala, in which it authorized the United Nations Mission for the Verification of Human Rights and of Compliance with the Comprehensive Agreement on Human Rights in Guatemala to monitor the implementation of the

Peace Accords. The Commission adopted its last resolution (1998/22) on Guatemala in 1998, relating to assistance in the field of human rights.

46. Continuing indigenous and land rights concerns, impunity for past violations, full implementation of the human rights aspects of the peace agreements, the continuing existence of illegal and clandestine groups, and maintaining the presence and commitment of the international community are all fundamental factors in building and securing peace in Guatemala. Human rights defenders working in post-conflict Guatemala agree that many of the grievances at the root of the conflict are still present to some degree and are manifested, for example, in indigenous and land rights concerns. Through their monitoring, investigations, reporting, advocacy and other activities, human rights defenders are contributing to addressing the Security Council's concerns to the extent that, without the work of human rights defenders, progress in assuring peace in some areas would be much less secure.

47. **Recognition of the current human rights situation.** Effective post-conflict reconciliation and reconstruction requires the Government and other actors involved to have a thorough knowledge of existing problems and potential obstacles. Human rights defenders' continuing monitoring and reporting on the situation of human rights in Guatemala has maintained awareness among domestic, regional and international actors of the ongoing human rights situation in the country.

48. **Root causes of the conflict and implementation of the peace accords.** In the hope of creating an independent and legally binding Land Registry, indigenous and campesino organizations have been active in submitting draft legislation proposals and ensuring that the related commitments contained in the 1996 Peace Accords are realized. Human rights policy think tanks and research institutions have been instrumental in presenting proposals for legal reform to relevant national bodies. For instance, the Plataforma Agraria has developed a proposal for rural development ("*Abriendo Brecha. Propuesta de Plataforma para el desarrollo Rural*") and jointly with the executive, has drawn up a plan of action ("*Plan de Atención Social a la Crisis Cafetalera y Conflictividad Agraria y Laboral*"), which was approved by Congress in December 2002.

49. **Illegal and clandestine groups within the State.** Human rights organizations within the Movimiento Nacional de Derechos Humanos were involved in drawing up the initial recommendation for the creation of a Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad (Commission for the Investigation of Illegal Bodies and Clandestine Security Apparatus — CICIACS). The CICIACS proposal represented a major breakthrough in securing State recognition that clandestine groups had infiltrated the State apparatus, threatened the rule of law, and needed to be dismantled. Human rights defenders were present at each step of the process, and were central to keeping the project on track. Different sectors of civil society have been involved in campaigns in favour of CICIACS. For instance: the Confederación de Religiosos de Guatemala gathered signatures requesting approval of CICIACS by Congress; Alianza Contra la Impunidad disseminated material informing the population about the nature and purpose of the proposal. Although a judgement by the Constitutional Court in August 2004 declared elements of the CICIACS agreement unconstitutional, human rights defenders have continued to urge the Government to make progress on the CICIACS initiative or to propose a suitable alternative mechanism.

50. **Justice, impunity and reconciliation.** A number of human rights organizations have helped to bring violations of humanitarian law to trial by providing victims with legal advice, and helping them with fund-raising and other forms of support. Human rights defenders have been instrumental in bringing key cases to the attention of regional and international human rights mechanisms. For example, in April 2004, the Inter-American Court of Human Rights ordered the Government to assume public responsibility and apologize for a massacre at Plan de Sánchez in July 1982. Human rights defenders have also strongly supported and actively promoted the establishment of a new office of the United Nations High Commissioner for Human Rights in Guatemala.

51. The above examples are just a small sample of defenders' contributions in Guatemala. With a well-advanced peace process and a functioning judiciary, human rights defenders in Guatemala have focused particular attention on ensuring that the human rights aspects of the peace agreements are implemented and on addressing impunity by taking cases of violations to the courts. Their work in these two areas alone is central to the peace process and to the objectives of the Security Council and the Commission on Human Rights. As in other countries, the neutral role of defenders ensures the participation of an essential actor in monitoring State and non-State actors' compliance with their obligations.

IV. Concerns that limit the role of defenders in addressing peace and security-related human rights violations

52. While there can be no doubt that the contribution of human rights defenders is fundamental to preserving peace and security, in many States defenders are confronted by severe limitations upon their capacity to conduct their human rights work and are very frequently themselves the victims of serious human rights violations. For instance, access to places, persons or information is essential to defenders in conducting their human rights work that could contribute towards restoring, strengthening or sustaining peace and security. Defenders have been prevented from speaking directly with witnesses and victims of violations through denial of access to places of detention or IDP camps and by a refusal to allow questioning to take place in private, or by intimidation of witnesses. From a perspective of preserving peace and security, the impact of these acts is such that defenders are prevented from fulfilling their role in support of human rights and that the many essential activities they conduct, as described above, are left undone or only partially done. The ultimate consequence is that peace and security worsen.

53. All of the defenders listed in this section who have suffered violations were working on issues that were of direct relevance to peace and security concerns raised by the Security Council or the Commission with regard to the country in which they were working. In a majority of cases they were trying to investigate and ensure justice for human rights violations that had already occurred. In some instances they were seeking resolution of land or environmental concerns that had, in the past, been among the causes of armed conflict. The violations against these defenders, only a very small sample of which are reported here, can only have harmed efforts to address those peace and security concerns.

54. In Nepal, since 1 February 2005, large numbers of human rights defenders are reported to have been arrested and subsequently detained under the Public Security Act, which allows the authorities to detain people for three months without charges for threats to "sovereignty, integrity or public tranquillity". On 8 February, Sukharam Maharjan, Vice-President of the Kirtipur Chapter of the Human Rights Organization of Nepal was arrested by persons identifying themselves as security personnel. In the next few days several human rights activists and members of Human Rights and Peace Society (HURPES), including Krishna Pahadi, the Chairperson, were arrested without warrants or charges. HURPES is a non-governmental and non-profit organization that carries out research and campaigning with a focus on non-violence, peace, human rights and democracy. Basu Devkota, General Secretary of the Human Development and Peace Campaign, and Rajesh Sharma, of the Human Rights Education Listeners Club, were also among those arrested and detained during this period. Their arrest and detention was reportedly arbitrary and related to their protests against human rights violations committed by security forces and State authorities.

55. On 8 June 2005, police in Kathmandu reportedly detained some 50 journalists who were protesting against restrictions on freedom of expression. Among those detained was Bishnu Nisthuri, the President of the Federation of Nepali Journalists. Bishnu Nisthuri had previously been arrested on 4 February 2005 following a statement issued by the Federation two days earlier condemning the measures taken by His Majesty King Guynendra, suppressing freedom of expression.

56. According to the information received by the Special Representative, in an apparent effort to reduce human rights monitoring in the rural districts of Nepal, the authorities prevented some human rights defenders from leaving Kathmandu. On 7 February 2005, Kapil Shrestha, a member of the National Human Rights Commission, was prevented from travelling to Biratnagar for the opening of a regional office of the Commission. On 26 February 2005, Subodh Pyakurel, Chairperson of the Informal Sector Service Center for Human Rights and Development (INSEC), Nepal's largest human rights NGO, was prevented from travelling to Nepalganj, where he was due to lead a human rights training course for security force personnel. On 4 March 2005, Commission member Sushil Pyakurel was turned back from Kathmandu airport when he attempted to lead a mission to investigate reports of vigilante violence against civilians in Kapilvastu.

57. The Maoist rebels have also targeted human rights defenders. Dekendra Raj Thapa, a journalist and member of HURPES, was killed in September 2004 and threats were also made against nine other journalists. The killing and threats were reportedly related to their human rights activities as members of HURPES and, in particular, because of their public condemnation of human rights violations committed by Maoists. Another journalist and representative of INSEC seeking information on the abduction of civilians by the Maoists was himself abducted in July 2004 and reportedly detained in a "labour camp" for several days. He is said to have received death threats even after his release.

58. In the Sudan, Waiel Taha and Yousif Fat'h Al Rahman, members of SOAT, were reportedly arrested in January 2004 during student demonstrations, held incommunicado and the latter, allegedly tortured before being released. Salih Mahmoud Osman, a member of a lawyers' network supporting SOAT, Osman Adam Abdel Mawla and Adib Abdel Rahman Yusuf, members of the Sudan Social

Development Organization, were reportedly arrested without charges in Khartoum and the Darfur region at different times between February and October 2004. Mudawi Ibrahim Adam, the Chairperson of the organization was arrested and detained once in 2004 and twice in 2005, without charges ever being pressed.

59. A number of national and international humanitarian NGO personnel have been detained in Darfur in connection with reports produced by their organizations on human rights abuses, including rape. The Special Representative also notes that there have been some reports of attacks by the rebel groups in Darfur against humanitarian workers and looting of humanitarian goods and transport.

60. In the Democratic Republic of the Congo, during December 2004 members of the African Association for Human Rights were threatened in e-mails and, in one case, warned of an imminent arrest. In June 2005, six human rights defenders were reportedly arrested, assaulted and detained by police in Lubumbashi while organizing a demonstration to demand that a fellow human rights defender be released. They included Timothée Mbuya, publications director at the Association, Hubert Tshiswaka, Executive Director of Action contre impunité pour les droits de l'homme, and Peter Kaodi and Emmanuel Impula of the same organization.

61. In Guatemala, in March 2004, Thelma Peláez, a judge with the Human Rights Section of the Ministerio Público, was followed by soldiers in plain clothes who threatened her because of her human rights investigations. In April 2004, staff of the NGO Donde están los niños?, specialized in investigating illegal adoptions and kidnapping of babies during the civil war, were forced at gunpoint to hand over materials on their cases to unidentified men who raided their office. In June 2004 Hugo Oswaldo Gutierrez Vanegas, President of the Comité Protierra de La Pita, an NGO working to address environmental and land rights concerns, was killed by unidentified persons. His murder was thought to be related to his work demanding protection of fertile land and the right of the La Pita community to use the land for its own subsistence. On 16 July 2004, the house of Edda Gaviola, who was working with the Centro para Acción Legal en Derechos Humanos, was raided and the following day witnesses of the Plan de Sánchez massacre received death threats, again from unknown persons. In October 2004, Luis Alberto López Batzin and other staff at the Procuraduria de Derechos Humanos of Coatepeque, Quetzaltenango, received death threats and were obliged to close their offices.

V. Conclusions and recommendations

62. **From the earlier sections of this report, it is clear to the Special Representative that the Security Council and the Commission on Human Rights have a consistent series of goals with respect to peace, security and human rights, and that human rights defenders play a major role in achieving these goals. It is also clear to her that when defenders suffer violations and are prevented from carrying out their human rights work, then the goals of the Council and the Commission are less likely to be attained.**

63. **In formulating her conclusions and recommendations, the Special Representative recalls again the Secretary-General report "In larger freedom ..." and particularly its emphasis on strengthening peace and security. The report calls for establishing a Peacebuilding Commission and for reform of the**

Commission on Human Rights into an institution that is better able to meet its human rights challenges. The Special Representative believes it to be essential that as Member States consider their response to the Secretary-General's report and his call for reform, they should be fully aware of the substantial role of human rights defenders in supporting peace and security.

64. **The Security Council and the Commission on Human Rights have both expressed strong interest in the development of early warning mechanisms to alert them to emerging peace, security and related human rights problems. The Special Representative considers that, as illustrated by some of the above examples, an effective early warning system already exists in the form of the work of human rights defenders. In the past, failure by the Security Council or the Commission on Human Rights to respond sufficiently early to the warnings given by human rights defenders has allowed peace and security and human rights situations to deteriorate to much more serious levels than might otherwise have been the case. It follows that both the Council and the Commission (or its successor) should ideally give greater consideration to receiving and reacting earlier to information from human rights defenders, largely reported to the Commission through its mechanisms, including the special procedures. The Special Representative also urges these bodies to recognize, protect and otherwise support the role of defenders in country situations under their consideration. Specifically, the Special Representative recommends:**

(a) **That human rights defenders be guaranteed timely and sufficient access to a reformed Commission on Human Rights (such as the Human Rights Council), including the possibility to present oral and written reports at moments that are most relevant for the issues being presented, and to have those reports given due consideration. Heightened access for defenders could be further facilitated by the Office of the High Commissioner for Human Rights;**

(b) **That the Office of the High Commissioner consider ways in which it can provide a rapid response to the reports of human rights defenders and through which defenders' work can be more effectively used as an early warning mechanism to alert the Security Council and the Commission on Human Rights;**

(c) **That in the context of their mandates on peace and security and human rights, the Security Council and the Commission recognize the grave implications of repression against human rights defenders for an overall country situation. In particular, it should be recognized that defenders suffering such repression would consequently be unable to report on the wider human rights problems in the country. Under such circumstances serious threats to human rights and peace and security are more likely to escape the notice of the Council and the Commission;**

(d) **That the Security Council and the Commission consider including references in their country resolutions that will address the protection of human rights defenders and guarantee their capacity to carry out their human rights work.**

65. **In many countries, including those represented by the examples in this report, civil society remains fragile and under strain. In order to integrate as a movement, NGOs require greater training opportunities and more resources, as well as support in developing strategies that will help them to form networks and to better coordinate their activities among themselves. Where civil society is weak, the Security Council and the Commission will not receive timely or comprehensive information on human rights concerns. In such contexts, United Nations agencies will not find adequate expertise among local implementing partners and their programme implementation will be weaker as a result. Further, the United Nations human rights treaty bodies and the various special procedures of the Commission depend to a very great extent on the information provided to them by human rights NGOs, and where civil society is weak this whole United Nations human rights framework is weakened as a result. The Special Representative recommends:**

(a) **That efforts by the Security Council and the Commission on Human Rights to prevent peace and security problems should include a focus on the capacity of civil society around the world and a commitment to creating the conditions and opportunities through which human rights civil society can be strengthened, in accordance with the rights and responsibilities defined under the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;.**

(b) **That United Nations offices, departments and specialized agencies develop policies to ensure that through their interaction with their NGO implementing partners they support the capacity-building of these partners and of civil society in general, particularly the capacity to maintain their independence;**

(c) **That the Office of the High Commissioner consider ways through which it can strengthen the role and security of human rights defenders through its programmes, particularly through activities of its field offices where they exist. The Office must also consider the best means of supporting United Nations offices, departments and specialized agencies in this regard, especially in helping to create better contact and interaction between national human rights defenders and peacekeeping operations of the United Nations.**

66. **While the message of a responsibility to protect human rights defenders is implicit in the previous two paragraphs, the Special Representative wishes to draw attention to another aspect of her concerns. Over the course of five years as holder of her mandate, the Special Representative has been informed by human rights defenders of the difficulty they sometimes have in gaining access to United Nations personnel at the country level, and a disturbing lack of response to human rights concerns that they have encountered.**

67. **The Special Representative recognizes the complexities inherent in coordinating the work of the United Nations machinery and of integrating human rights across the whole of the United Nations system. She is also aware that a good deal of progress has been made in this regard in recent years. However, when a human rights defender herself at risk or having urgent information about very serious and widespread human rights violations in a**

country fails to get a response, it surely indicates that a great deal of progress remains to be made. The Special Representative can only express her deep regret at all such failures, recalling that respect for human rights goes to the core of the United Nations mandate. The United Nations bodies and personnel at the country level are the only direct contact that the vast majority of human rights defenders will ever have with the United Nations system. The Special Representative believes that it is incumbent upon the United Nations to ensure that this contact is one that is positive for the common interests of human rights. She therefore recommends:

(a) That United Nations offices, departments and specialized agencies give fuller consideration to the overall commitment of the United Nations to human rights in fulfilling their role and carrying out their activities at the country level. Special consideration must be given, in this regard, to human rights training for their country-based staff;

(b) That United Nations offices, departments and specialized agencies consider ways through which, within the limits of their mandates, they can support the work of human rights defenders who are their implementing partners and devise appropriate responses to protect them from harm, if the need arises;

(c) That United Nations offices, departments and specialized agencies consider ways in which they can react to those human rights concerns that fall within their mandates or take the responsibility to transmit urgent human rights information falling outside their mandates to other relevant United Nations entities;

(d) That the Office of the High Commissioner for Human Rights give consideration to ways in which it can encourage and support other United Nations bodies in achieving the above goals. For this purpose a clearer understanding and a greater acceptance by the wider United Nations system of the leading role of this Office in the area of human rights is essential;

(e) That, in the context of the ongoing reform process, Member States and the Office of the High Commissioner consider ways of further increasing capacity of the Office to respond to the protection needs of human rights defenders and to respond rapidly to the wider human rights issues being reported by defenders.

68. In her report to the next session of the Commission the Special Representative intends to focus on identifying progress made in the protection of defenders and implementation of the Declaration by measures taken in the countries from which she has received information in the past six years. The Special Representative hopes that this summary of progress made, and remaining to be made, will provide additional momentum for action in favour of human rights defenders, which would ultimately contribute directly to addressing the core peace, security and human rights objectives of the United Nations.

United Nations A/60/340

General Assembly

Distr.: General
8 September 2005

Original: English

Sixtieth session
Item 73 (b) of the provisional agenda*
Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights and cultural diversity

Note by the Secretary-General

1. The General Assembly in its resolution 58/167 requested the Secretary-General to prepare a report on human rights and cultural diversity, taking into account the views of Member States, relevant United Nations agencies and non-governmental organizations. As no comments were received in response to requests for information, the Secretariat wishes to inform the members of the General Assembly that a more comprehensive report will be submitted to the Assembly at a future session.

2. In this connection, the Assembly may wish to note that the Commission on Human Rights in its resolution 2005/20 requested the High Commissioner for Human Rights to consult States and intergovernmental and non-governmental organizations on the particularities and scope of the mandate of an independent expert on the promotion and enjoyment of the cultural rights of everyone and respect for different cultural identities, the basis of which would be the comprehensive implementation of the resolution, and to report on the results of those consultations to the Commission at its sixty-second session.

* A/60/150.

05-48339 (E) 130905